

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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**CRR No. 2463 of 2018
Date of Decision: 21.09.2018**

Rohit Kumar through his mother Kusum Devi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL.

Present:- Mr. Saurabh Sharma, Advocate,
for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner is aggrieved because he has been summoned to stand trial as an additional accused on an application moved under Section 319 of the Code of Criminal Procedure, 1972.

Learned counsel for the petitioner submits that the petitioner was a juvenile on the date of the incident as is apparent from order dated 03.01.2018. The trial Court has summoned the petitioner as an additional accused only on the basis that the complainant while appearing as PW1 has again named him as a person who was part of the unlawful assembly and had inflicted injuries on the complainant side which was in fact a reiteration of his statement recorded before the Police at the time of registration of the FIR. The petitioner was merely fourteen years and nine months on the date of the incident and no prudent father would have taken him along to be a part of an unlawful assembly. The police had kept the petitioner in column No.2 while presenting the challan as it was found that he was not present at

the spot. Moreover, a cross case has been registered against the complainant side in which they are being tried and thus, the complainant is proved to be the aggressor. The summoning of the petitioner is thus, illegal.

A perusal of the impugned order shows that the trial Court has considered the statement of the complainant as PW1, in the context of his statement Ex.P1 as well as the final report presented under Section 173 Cr. P.C. It has been found that the conclusion drawn in the report under Section 173 Cr. P.C. that the petitioner was not present at the spot is not supported by reason or evidence. Consequently, finding has been returned that the evidence on record establishes more than a prima facie case against the petitioner. The reasons and the findings recorded by the trial Court are in conformity with the law on the subject and no error has been pointed out therein. Stress has been laid on the fact that the presence of the petitioner on the spot was not likely as he was only fourteen years and nine months on the date of the incident, coupled with the fact that the complainant side is also facing trial in the cross case. The said considerations are not relevant while deciding an application under Section 319 Cr. P.C.

In view of the above, I hold that the petition has no merits and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

September 21, 2018
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Whether speaking/reasoned
Whether reportable

Yes
No