

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3009-2018 (O&M)

Date of Decision:-06.09.2018.

Vikas

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Krishan Singh Dadwal, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

In this revision petition, petitioner has sought for quashing of order dated 24.08.2018 passed by the Additional Sessions Judge, Kurukshetra in CNR No.HRKU01-004008-2017 SC/198/2017 (State Vs. Surjeet Singh and others).

2.) Learned counsel for the petitioner vehemently contended that in the absence of evidence, Sessions Court proceeded to pass order while allowing application under the provisions of Section 319 Cr.P.C. in part to the extent of summoning the petitioner through non-bailable warrants. Learned counsel for the petitioner in support of non-availability of evidence, he relied on Supreme Court decision passed in **Hardeep Singh Vs. State of Punjab and others 2014 (1) ADJ 727** para Nos.71, 79, 80, 98 and 99 and also definition of evidence under the Evidence Act. Further he relied on decision of this Court passed in **Laxmi Vs. State of Haryana and**

another 2018 (1) KLT 400.

- 3.) Heard the learned counsel for the petitioner.
- 4.) Section 319 Cr.P.C. application is to summon Raj Kumar, Nirmal and Vikas (petitioner). The learned Sessions Court after due consideration of PW-2 Ashok Kumar's statement in his examination with reference to accused petitioner passed the order dated 24.08.2018. Extract of para 11 of the order reads as under:-

“PW2 Ashok Kumar has stated in his examination that accused Vikas son of Dayanand gave sugar cane cutter blow on the head of his father Raghbir Singh and the perusal of MLR of Raghbir Singh shows that he has sustained a lacerated wound of 3x0.5 cms on the right upper parietal. So, the testimony of PW2 Ashok Kumar is also found corroborated from the medical evidence. Hence, there are sufficient evidence on record to summon Vikas son of Dayanand to face the trial as additional accused alongwith the accused already facing trial in the present case.”

Having regard to the definition under the Evidence Act in respect of evidence, it has not distinguished what type of evidence. Learned counsel for the petitioner tried to distinguish that complainant's statement or evidence cannot be taken into consideration in view of the cited decisions supra. Perusal of the entire decision of the Supreme Court, nowhere there is a distinction as to what type of evidence is required to be taken into consideration. He has also not apprised this Court whether complainant statement or evidence could be ignored for the purpose of deciding application under Section 319 Cr.P.C. Therefore, one cannot ignore the statement or evidence of PW-2 Ashok Kumar. In respect of decision cited of Laxmmi supra, no where this Court has considered what type of evidence

is required to be taken into consideration for the purpose of deciding application under Section 319 Cr.P.C. Moreover, the very definition of evidence in Evidence Act do not distinguish what type of evidence or statement are required to be taken into consideration for the purpose of considering application under Section 319 Cr.P.C. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the order dated 24.08.2018.

6.) Petition stands dismissed.

7.) At this stage, learned counsel for the petitioner submitted that petitioner would face trial on the fixed date, i.e. on 12.09.2018 in the absence of non-bailable warrants to face trial. To that extent order dated 24.08.2018 is read down viz; “.....*through non-bailable warrants to face the trial along with the accused already facing trial in the present case, for 12.09.2018.*” it is clarified that petitioner's presence on 12.09.2018 would be without their being non-bailable warrant.

(P.B. BAJANTHRI)
JUDGE

September 06, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.