

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

CRM No.M-10940 of 2018 (O&M)

Date of Decision: May 21, 2019

Vivek Sharma

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.V.K.Jindal, Senior Advocate with
Mr.Sukesh K. Jindal, Advocate
for the petitioner.

Mr.Chetan Sharma, AAG, Haryana
for the respondent-State.

Mr.Abhinav Sood, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner Vivek Sharma has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and S.C.Talwar, for quashing order dated 16.02.2015 passed by learned Judicial Magistrate Ist Class, Ambala, whereby the petitioner along with other co-accused has been ordered to be summoned under Section 319 Cr.P.C. in case FIR No.196 dated 04.06.2008 under Sections 148, 149, 323, 427 and 506 IPC, registered at Police Station Ambala Cantt. and for quashing the order dated 24.11.2017 passed by learned JMIC, Ambala, whereby, non-bailable warrants have been issued against the petitioner and other co-accused and all further

proceedings thereto.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that FIR in the present case has been got registered by S.C.Talwar-respondent No.2, who mainly stated that their school buses are being parked in the school ground. At about 8.15 a.m., he and his staff members namely Rajesh, Parmanand, Amarjit, Jitender, Ravi and Prem were present. At that time, 40-50 people came, who were already playing football. Then suddenly, Yograj and other persons came and started beating the complainant and his staff members. They also damaged glasses and doors of the buses parked in the ground. Names of some of persons, who they knew are Yograj, Vicky Walia, Neeraj, Rajan, Vinod, Johny etc. and names of other persons were not known. It is further in the FIR that these persons used to enter the school ground daily in the morning by climbing the wall of the school.

An application under Section 319 Cr.P.C. was filed during the pendency of the trial, which was pending against accused Yog Raj, Jaspal, Rajan Verma, Jatinder Singh Walia. In the application, it is stated that complainant has clearly mentioned the names of accused as Yog Raj, Vicky Walia, Neeraj, Rajan, Vinod, Johny and other persons. The complainant stated that names of Vinod, Johny, Rajan, Vicky and others, who could be recognized if they come present, has been mentioned. It is prayed in the application that Vicky, Neeraj and Vinod may be ordered to be summoned

16.02.2015, summoned accused Vicky, Neeraj, Vinod and Johny. Later on, learned JMIC, Ambala, vide impugned order dated 24.11.2017, passed the order by restoring the case which was earlier consigned due to compromise with other accused and summoned Vivek Sharma @ Vicky son of Sham Sunder Sharma, resident of 6340, Ahluwalia Building, Ambala Cantt.

The perusal of the record shows that in the FIR, the complainant has named some of the accused and one Vicky but no parentage, caste, age, address or any other particular has been mentioned of accused Vicky. He has nowhere mentioned accused Vicky is known as Vivek Sharma @ Vicky. Rather, in the application filed under Section 319 Cr.P.C., it is written as Vicky Walia, though, there is no such accused in the name of Vivek Sharma @ Vicky. Further, in the FIR also, it is simply mentioned as Vicky but no other particulars have been mentioned, neither he has been mentioned by any relation to other accused nor his face appearance, height, alias name nor any caste, age, have been mentioned. Learned JMIC, Ambala, has passed the impugned order without determining the identity of accused Vicky.

The standard of proof in summoning case is somewhat more than prima facie case. When there is nothing on the record nor in the FIR nor in the statement of the complainant to determine identity of additional accused, then the Court should not have summoned Vivek Sharma @ Vicky. There may be some persons with the name of Vicky in the village. Again, the Court below while passing the impugned order dated 24.11.2017, summoned Vivek Sharma @ Vicky son of Sham Sunder Sharma, resident of 6340, Ahluwalia Building, Ambala Cantt. but this address, alias name and

investigation nor in the statement of the witness nor in the application under Section 319 Cr.P.C.

In view of the above discussion, I find that the impugned orders dated 16.02.2015 (Annexure P-3) and 24.11.2017 (Annexure P-5) passed by learned JMIC, Ambala, are not as per law and the same are set aside qua present petitioner only along with all subsequent proceedings qua him.

Therefore, finding merit in the present petition, the same is allowed.

May 21, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No