

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

**Date of decision: 31.05.2019**

**1. CRM-M No.18082 of 2017 (O&M)**

Jitender Kumar and another

....Petitioners

Versus

State of Haryana and another

....Respondents

**2. CRM-M No.23786 of 2017 (O&M)**

Rajesh

....Petitioner

Versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

**Present:** Mr. P.R. Yadav, Advocate  
for the petitioners.

Mr. Himmat Singh, DAG, Haryana.

Ms. Supriya Garg, Advocate  
for respondent No.2.

**ARVIND SINGH SANGWAN J.**

Prayer in the petition i.e. CRM No.18082 of 2017 is for setting-aside the order dated 16.07.2014 (Annexure P4) passed by the trial Court vide which the application filed under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') filed by the complainant/respondent No.2 was allowed and the petitioners namely Jitender Kumar and Vinod Kumar were summoned as an additional

accused by citing them as Jitender @ Naveen and Vinod @ Manoj as well as the order dated 28.02.2017 (Annexure P17) passed by the Revisional Court dismissing the revision filed by the petitioners.

In another petition i.e. CRM-M No.23786 of 2017, filed by the petitioner – Rajesh, the same impugned orders have been challenged vide which he was also summoned as an additional accused.

Brief facts of the case are that the complainant/respondent No.2 got the FIR No.82 dated 17.06.2012 registered under Sections 148, 149, 323, 427, 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Ateli, District Mahendergarh against Naveen son of Ved Parkash, Rajesh son of Birender Singh and Gyarsi Lal son of Ram Kumar with the allegations that when the complainant along with his cousin Amar Singh were present in the fields and were changing the dividing line of their agricultural land, then all the above accused persons attacked them and Naveen had thrown a stone, which hit on his nose and when the complainant's relative Prith Bhan tried to rescue them, then Rajesh gave a stone blow to Prith Bhan on the palm of his right hand and Birender, Manoj and Gyarsi gave kicks, punches and slaps to the complainant. It is further stated that the reason for causing injury was that a land dispute was going on between Rajesh and Amar Singh, etc. in the Court.

The police, thereafter, submitted a report under Section 173 Cr.P.C. against Birender and Gyarsi Lal, while keeping Rajesh, Manoj and Naveen in Column No.2.

The trial Court framed the charges and the complainant appeared as PW1, in which he has given the version as given in the

FIR, while recording his examination-in-chief. This witness was cross-examined by 02 accused persons, who were facing the trial.

Thereafter, an application under Section 319 Cr.P.C. was filed by the complainant through the Public Prosecutor stating that 03 other accused namely Naveen, Vinod and Rajesh, who were also named in the FIR be summoned as an additional accused.

The trial Court vide order dated 16.07.2014 allowed the application observing that there is sufficient evidence on record to summon them as an additional accused.

Thereafter, the trial Court passed an order dated 29.01.2015, which is relevant for the present controversy and is being reproduced as under:-

*“Non-bailable warrant issued against accused Manoj received back unserved with the report that there is no persons dwelling at village Aatali known as Vinod @ Manoj son of Gyarsi Lal. However, this report reads that there is another person in the name of Vinod Kumar son of Gyarsi Lal. But from the perusal of my order dated 16.07.2014 reveals that Manoj son of Gyarsi Lal was summoned by this Court as co-accused and not Vinod @ Manoj. Additionally to controvert this report, the de-facto complainant Sheoy Chand adduced a sworn affidavit on dated 08.12.2014 reiterating the fact that Vinod and Manoj is known as the same human entity in the village Atali and in order to buttress his sworn stand point, he has orally asserted that he can identify the accused, if produced before the Court.*

*Likewise, the NBW issued against Naveen received back unserved with the report that there is no person residing at village Atali in the name of Naveen @ Jitender*

*son of Ved Parkash albeit there is another person in the name of Jitender Kumar son of Ved Parkash, caste Ahir, who is serving with Indian Railway Police. In this scenario, the de-facto complainant is hereby directed to adduce a sworn affidavit regarding the fact whether or not Naveen and Jitender is same human entity.*

*Against this backdrop, fresh NBW be issued against accused Vinod son of Gyarasi Lal and vis-a-vis the identity of accused Naveen, the complainant is hereby directed to furnish the sworn affidavit supported by some cogent evidence on 02.03.2015.”*

The trial Court, thereafter, on 02.03.2015 passed another order in which for the first time, it is stated that non-bailable warrants against accused Vinod @ Manoj and Naveen @ Jitender have not received back. For a ready reference, the order dated 02.03.2015 is reproduced as under:-

*“Non-bailable warrant issued against Vinod @ Manoj and Naveen @ Jitender not received back. Fresh non-bailable warrant of accused Vinod @ Manoj and Naveen @ Jitender be issued for 15.04.2015. Court notice to complainant be also issued for the date fixed.”*

Counsel for the petitioner has submitted that in pursuance to the aforesaid order, the petitioners were granted anticipatory bail and thereafter, they have appeared before the trial Court and preferred a revision challenging the order dated 16.07.2014 before the Court of Sessions. The same was, however, dismissed vide order dated 28.02.2017. The operative part of the said order is reproduced as under:-

*“7. I have heard learned counsel for the revisionist and learned Public Prosecutor for the State and*

*have gone through the material placed on the file carefully.*

**8.** *The law on the point is fairly settled. Power under Section 319 of the Code of Criminal Procedure is an extra ordinary power of the court to summon and try a person, if it appears from the evidence that such person not being the accused has committed any offence for which he could be tried together with the accused. The said extra ordinary power has to be exercised judiciously and most sparingly in order to avoid injustice being caused to any person.*

**9.** *In the statement of complainant under section 161 Cr.P.C and the statement of Pritbhan and from the X-ray reports of the complainant Ex.P1 and Ex.P2 it is reflected that he had suffered grievous hurt on his nasal bone as was alleged by the complainant and fortified from the statements of other witnesses. It is also proved from prosecution version that on 17.6.2012 accused Naveen, Manoj and Rajesh formed an unlawful assembly with the accused already facing trial and then committed the offence of rioting having deadly weapons and in the prosecution of the common object of that assembly, the accused Naveen pelted the stone towards the applicant Sheo Chand which hit hard on the nose resulting into grievous nasal bone injury to him and that Rajesh inflicted another stone injury to Pribhan. From the conjoint reading of deposition of PW1 and the documents placed on file, it also proves that the accused while reiterating from the spot administered criminal intimidation to the complainant and his relative Pritbhan. Section 319 provides the power to proceed against other persons appearing to be guilty of offence where in the course of any inquiry, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which*

*such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

*10. Though the learned counsel for the revisionist cited case law titled **Deepika Vs. State of Haryana and another 2015 (4) RCR (Criminal) 66 Chander and another Vs. State of Haryana 2015 (3) RCR (Criminal) 764, Mahinder Singh vs Swaran Kaur and others, 2010(4) RCR (Criminal) 465, Sarabjit Singh and another vs State of Punjab and another 2009 (3) RCR(Criminal) 388, Lal Suraj @ Suraj Singh &Anr. Vs. State of Jharkhand 2009 (1) RCR (Criminal), 504 and Mohd. Shafi Vs. Mohd, Rafiq and another 2007 (2) RCR (Criminal) 762** are not disputed but with due respect not applicable to the present case being distinguishable on facts and circumstances.*

*11. In view of the above discussion, this court come to the conclusion that the learned trial court rightly summoned the petitioners. Finding no merit, the revision petition is hereby dismissed. Copy of this order be sent back to the court concerned for compliance. Trial court record be sent back. Revision file be consigned to the record room, after due compliance.”*

Counsel for the petitioners has argued that though in the order dated 29.01.2015, the complainant was directed to furnish his sworn affidavit supported by some cogent evidence that the petitioners have *alias* names, without there being any such evidence, the trial Court proceeded to issued non-bailable warrants vide order dated 02.03.2015 (both the orders reproduced above). It is, thus, submitted that the trial Court without passing a separate order and recording its satisfaction that the petitioners i.e Naveen and Manoj are known by their *alias*

names, has proceeded further.

Counsel for the petitioners has further submitted that though in the grounds of revision taken before the Court of Sessions, the petitioners have raised a specific ground in para 5 that the petitioners have been summoned by adding their *alias* names with the names mentioned in the FIR and there is no identity proof of the petitioners in this regard.

Counsel for the petitioners has relied upon the identity proof of the petitioners like Detail Mark Card, Voters Card, Aadhar Card to submit that in none of the documents, the petitioners' name is reflected with any *alias* name. It is, thus, argued that the Revisional Court without looking into this aspect of the case has dismissed the revision.

Counsel for the petitioners has also relied upon the statement of another witness i.e. PW4 – Prith Bhan, the eye-witness, to submit that even in the statement of this witness the *alias* names of the petitioners are not mentioned, though he is resident of the same village. Counsel for the petitioners has further relied upon the statement of the police officials, who have also not stated about this fact.

In reply, counsel for the respondents has, however, opposed the submissions made by counsel for the petitioners on the ground that the names which the petitioners have given are, in fact, the names only in documents and in the village they are also known by their *alias* names.

Counsel for the State has also argued that the trial Court on the basis of the appreciation of evidence has recorded its satisfaction

that the petitioners are liable to be summoned under Section 319 Cr.P.C. It is further argued that there is no dispute about the identity of the petitioner – Rajesh.

After hearing the counsel for the parties, I find merit in the present petitions. It is admitted case of the parties that in the FIR, no *alias* name of the petitioners – Jitender and Vinod are given and even in the statement of the complainant – Sheoy Chand, who appeared as PW1, it is not mentioned that the petitioners are known with their *alias* names. Even in the application filed under Section 319 Cr.P.C., no such averment is made. The trial Court while issuing notices on the basis of some report that no such persons by the name of Naveen and Manoj are residents of village Aatali, for the first time, issued a direction to the complainant to place on record some cogent evidence in this regard. This order is admittedly passed after the summoning of the petitioners, vide impugned order dated 16.07.2014 and, therefore, the complainant as well as the eye-witness, who are residents of the same village having their land abutting the land of the petitioners, nowhere mentioned that the petitioners are known with their *alias* names. A perusal of the grounds of revision filed before the Revisional Court show that in para 5, a specific objection has been raised that the petitioners are not known by the name of Manoj and Naveen, however, the Revisional Court while dismissing the revision has not dealt with this issue.

In view of what has been discussed hereinbefore, ***both these petitions are allowed***; the orders dated 16.07.2014 passed by the trial Court and dated 28.02.2017 passed by the Revisional Court are ***set-aside*** and the ***matter is remanded back to the trial Court*** to first

record its satisfaction that the petitioners are known by their *alias* names and thereafter, pass afresh order, in accordance with law.

Since the impugned orders *qua* the petitioners – Jitender Kumar and Vinod Kumar has been set-aside, it will be appropriate to set-aside the orders dated 01.04.2013 and dated 28.02.2017, *qua* the petitioner – Rajesh also, so that a fresh consolidated order be passed in both the petitions.

Ordered accordingly.

The parties through their counsel are directed to appear before the trial Court on or before 30.07.2019.

(ARVIND SINGH SANGWAN)  
JUDGE

31.05.2019

*yakub*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |