

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

**CRR No.311 of 2017 (O&M)
Date of Decision: March 06, 2019**

Abdul Rashid

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Matya, Advocate
for the petitioner.

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

Mr.Sarfraj Hussain, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Abdul Rashid against respondents State of Haryana and Sarfraj, challenging the impugned order dated 05.11.2016 passed by learned Addl. Sessions Judge, Mewat, vide which the application filed by the petitioner under Section 319 Cr.P.C. was dismissed.

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 challan in the present case has been

presented by the police of Police Station Punhana in case FIR No.274 dated 12.04.2011 under Sections 148, 149, 323, 325, 307, 452 and 506 IPC. During the pendency of the trial, an application under Section 319 Cr.P.C. was filed by the complainant-petitioner through Public Prosecutor for summoning Sarfraj as additional accused. It is stated in the application that when complainant asked Mubarik to make payment of milk supplied to him, he got annoyed and told the complainant to stay and he will come back to make the payment. Thereafter, Mubarik went to his house and after 20-25 minutes, accused Sarfraj, Talim, Shehzad, Jamshida, Samina, Mubarik, Nisar, Nusrat and Haban came to complainant's house and in furtherance of their common intention, caused injuries to him. Sarfraj gave *chandia* blow on left side of head of the complainant whereas other accused also caused injuries to him. It is also in the application that names of all the accused were mentioned in the FIR as well as in the statement recorded under Section 164 Cr.P.C., but during investigation, the Investigating Officer had wrongly given clean chit to said persons, whereas those persons played active role with other co-accused in commission of offence. In the first application under Section 319 Cr.P.C., Mubarik, Nusrat and Habban were summoned as additional accused but name of accused Sarfraj was not mentioned in the said application as the police had mentioned in the final report that Sarfraj is yet to be arrested. Learned trial court, after hearing the parties and after going through the record, dismissed the application vide impugned order dated 05.11.2016.

From the record, I find that already seven persons are facing trial and as per MLR, there are only two lacerated wounds. Other four injuries are, abrasion, complaint of pain, water discharge blood stained from

left ear and vomiting blood stained clotted blood. The weapon used for all these injuries is stated to be blunt. No dimension of any external injury has been mentioned regarding these four injuries. The present petitioner is stated to be armed with *chantia*, which, as admitted by both the parties, is a sharp edged weapon but no injury with sharp edged weapon has been mentioned in the MLR. Therefore, oral version of the complainant is not corroborated by medical evidence.

Furthermore, earlier an application under Section 319 Cr.P.C. was filed by the prosecution to summon Mubarik, Nusrat and Habban but at that time, Sarfraj was not named, though statement was already recorded. It is no ground that name of Sarfraj was not mentioned as in the challan, it was mentioned that Sarfraj is still to be arrested. As per record, challan in the present case has been presented on 09.10.2012 and the application for summoning Mubarik, Nusrat and Habban was moved on 23.09.2014, which was allowed on 23.10.2015. Sarfraj was found innocent on 04.06.2013 as per zimini recorded by DSP Head Quarter, Nuh. At that time, no application was filed to summon Sarfraj.

In view of the medical evidence and the fact that seven persons are already facing trial for the injuries with blunt weapon and Sarfraj has been found innocent during investigation and further in view of the fact that no injury with sharp edged has been caused, I find that it does not appear to the Court that Sarfraj is also involved in the commission of offence and he should be tried along with accused already challaned.

In view of the above discussion, I find that no illegality has been committed by learned trial Court while dismissing the application

05.11.2016 passed by learned Addl. Sessions Judge, Mewat, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

March 06, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No