

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

CRR-3905-2018

Date of decision-14.01.2019

Ayush @ Minky

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ravinder Hooda, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner-Ayush @ Minky is dissatisfied with the impugned order dated 10.09.2018 passed by the trial Court, whereby his application under Section 319 of Code of Criminal Procedure (in short 'Cr.P.C') for arraying respondent Nos.2 to 5 i.e. Pintu, Bhopal, Suresh and Balbir as additional accused in FIR No.473 dated 04.11.2016 was dismissed. The said FIR was recorded on the basis of the statement of Ayush (PW-5) for the offences punishable under Sections 323, 452, 148 and 506 read with Sections 34 and 149 of Indian Penal Code.

It needs to be noted here that FIR was recorded on the statement of Ayush is a cross case set up by him in response to the FIR No.466 dated 30.10.2016 recorded at the statement of injured Rahul for the offences punishable under Sections 323 and 307 read with Section 34 of IPC and Section 25 of Arms Act. It is not in dispute that injured Rahul and Mahesh are the victims in FIR No.466 wherein gun shot injuries are suffered by the injured.

The complainant had set up this case after five days of occurrence which took place on 29.10.2016 and had mentioned that accused Rahul and Mahesh entered his house and caused injuries to his father by fist and kick blows. It is further alleged that respondent Nos.2 to 5 also joined Rahul and Mahesh and gave beatings. In the latter part of the FIR, it is admitted by the complainant-Ayush that except for Mahesh and Rahul, rest of the assailants namely, Pintu, Bhopal, Suresh and Balbir i.e.respondent Nos.2 to 5 ran away from the spot.

After commencement of trial, Ayush examined himself as PW-5 and on the basis of his evidence, an application was moved for summoning additional accused.

Learned counsel for the petitioner has been heard and with his assistance I have gone through the impugned order.

It is argued by learned counsel that evidence of PW-5 clearly establishes the involvement of respondent Nos.2 to 5 in the said occurrence which took place on 29.10.2016 and, therefore, they deserve to be arrayed as an accused in the said FIR No.473.

This Court does not find any merit in the said argument as the trial Court has minutely examined the evidence of PW-5. It is found that there was variance in the version given initially before the Police whereupon the FIR was recorded. Not only this, the injury attributed to Pintu which he had allegedly given to the complainant is not indicated in the MLR. The Court has noticed the material contradictions in the version given by complainant Ayush. The relevant paragraph of the judgment passed by the

Court below is extracted below:-

“The statement of Ayush made before this court on 09.04.2018 as PW5 is quite at variance with the statement made before the police on which basis FIR was registered. Although, as per the statement made before the police, only accused Rahul and Mahesh initially entered the house and started beating his servant and when his father tried to reason with them, Manoj and Rahul started beating his father with kick and fist blows and only thereafter, Pintu, Balbir, Suresh and Bhopal alongwith others entered and gave beatings. Contrary to this, as PW5 Ayush says that on 29.10.2016 at about 7.30/8.00 PM he alongwith his parents, wife and daughter came to their house when he noticed Mahesh, Rahul, Umar Mohammad and Bhopal quarreling with their driver Chootu and when his father tried to reason with them, all four of them started giving beatings to his father and mother. He rushed to rescue them at which all the four assailants fled away and thereafter, after some time, all four of them alongwith Pintu, Balbir and Suresh son of Duli Chand came there armed with dandas, iron rods and started giving beatings to him and his mother after entering their house. He further disclosed that at that time, he was holding a licenced revolver and that assailants caught hold of him and snatched the revolver. When he tried to snatch back his revolver, one bullet was accidentally fired and hit Rahul on his leg. As per him, Mahesh was holding the revolver at that time. As per him, Pintu hit iron rod on his head and that Balbir caught hold of him from behind. This entire version is quite contrary to the statement made before the police. No where he had disclosed about holding any licenced

revolver and that any bullet was accidentally fired and in what manner. The role of other assailants is also differently stated.

Moreover, although as per the statement of Ayush, Pintu hit him iron rod on his head but the MLR does not reveal any injury on the head, which further falsified the version of the complainant Ayush. Not only this, it is admitted by PW5 Ayush that he is facing trial in case FIR No.466 dated 30.10.2016 registered under Sections 323, 325, 307 IPC and Section 27 of Arms Act, which is pending before this Court itself for causing fire arm injuries to Rahul and Mahesh. Lot of material contradictions appearing in his statement were confronted to him which he could not satisfactorily explain.”

This Court finds that view adopted by the trial Court is based on the correct appreciation of the material. It is settled principle of law that provision of Section 319 Cr.P.C cannot be invoked in a mechanical manner until and unless, there is clinching evidence to indicate the involvement of accused. This Court does not find any impropriety or illegality in the impugned order passed by the Court below. Therefore, no interference is warranted in the revisional jurisdiction.

Consequently, petition is dismissed.

(MANOJ BAJAJ)
JUDGE

14.01.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No