

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

103

CRR-1275 of 2020 (O & M)
Date of decision :-29.01.2021

Rajender Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Rajat Mor, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

The hearing of this petition has been taken up through video
conferencing on account of outbreak of Covid-19 Pandemic.

CRM-30288-2020

For the reasons given in the application, the same is allowed.

The statements of prosecution witnesses examined as PW-2 to PW-4 and
disclosure statements of accused Rohtash and Kuldeep are taken on record
as Annexures P-8 to P-12 respectively.

Main Case

Instant criminal revision has been filed under Section 401 of the
Code of Criminal Procedure impugning the order dated 12.03.2020 passed
by the learned Additional Sessions Judge, Rewari in FIR No.91 dated
17.05.2018 registered under Sections 148, 149, 323, 325, 307 and 506 IPC at
Police Station Rampura, Rewari, Annexure P-1, whereby the discharge

report has been rejected and the accused-petitioner has been ordered to be summoned.

Facts, in brief, are that on 07.05.2018, when Babru Bhan was returning from his agricultural field, he was waylaid by Rohtash, Kamal, Rajender Singh (present petitioner), Ramesh, Gajender, Kuldeep, Manoj, Narender, Ravi, Sandeep, Shanti, Nirmala, Krishna and Munia, who dragged him to their plot and started beating him with lathi, jelly and pharsi. Upon hearing the commotion, Rajni, Ram Kumar and Suman came on the spot and tried to control the situation but the accused started beating them. In the melee, Babru Bhan, Ram Kumar and Suman sustained injuries. The motive was previous enmity. The abovementioned FIR was registered on the statement of Rajni, sister-in-law of Babru Bhan. Investigation was initiated and vide report dated 05.07.2018, Annexure P-4, the Superintendent of Police, Rewari found that Kuldeep and Rohtash were involved in the fight. The report was accepted vide letter dated 21.07.2018, Annexure P-5, by the Superintendent of Police, who recommended that a lie dictator test be conducted on the remaining accused. An application to this effect was moved before the JMIC and orders were obtained. However, the Director of Forensic Science Laboratory, Madhuban, wrote that in normal cases the lie detector test cannot be conducted. Therefore, instead of conducting the test on the accused, the matter was investigated. Six more persons namely Narender, Manoj, Gajender, Sandeep, Ramesh and Ravinder were found to be involved and challan against them was filed before the Court on 26.10.2018. By his report dated 19.06.2019, Annexure P-6, the Superintendent of Police found that Rajender, the present petitioner, was not involved and that he was elsewhere at the time of the alleged incident. This

report was presented before the trial Court and was rejected by the impugned order whereby the petitioner was summoned as an accused.

Counsel for the petitioner has argued that an inquiry into the episode had been conducted twice over and on both occasions the petitioner was found to be innocent. He has referred to the reports, Annexures P-4 and P-6, in depth to support his argument. He contends that once the prosecution agency did not find the petitioner to be involved in the occurrence, the trial Court could not reject the report and summon the petitioner as an accused.

Advance copy of the petition has been served on the counsel for the State, who has appeared and opposed the petition. He has argued that besides the disclosure statement of the accused petitioner on the basis of which recovery of stick had been effected, the petitioner was named in the FIR as well as by three prosecution witnesses PW-2 to PW-4 in their statements, Annexures P-8 to P-10. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **Saeeda Khatoon Arshi versus State of U.P. and another**, (2020) 2 SCC 323 to urge that the trial Court is not powerless to summon additional accused in case the evidence on the record so warrants.

I have considered the respective submissions of counsel for the parties and examined paper book with their able assistance.

In **S.Mohammed Ispahani versus Yogendra Chandak**, 2017 (4) RCR (Criminal) 650, the Hon'ble Supreme Court explained the power of the trial Court under Section 319 of the Code of Criminal Procedure, 1973 and observed as under: -

“It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge sheet without implicating him, the Court

is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 of the Cr.P.C. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

Following this judgment, Hon’ble Supreme Court in Saeeda Khatoon Arshi (Supra) held as under:-

“Section 319 empowers the court to proceed against a person appearing to be guilty of an offence where, in the ordinary course of any enquiry into 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 exercise of the discretion by the Additional Sessions Judge to summon the second respondent fulfilled the requirements of Section 319 and was consistent with the parameters laid down by the decisions of this Court noticed earlier. The fact that a protest petition had not been filed by the appellant when the report was submitted under Section 173 did not render the court powerless to exercise its powers under Section 319 on the basis of the evidence which had emerged during the course of the trial. The evidence of PW-1 and PW-2 which has been adverted to above meets the threshold required to sustain an order for summoning under Section 319.....”

In the present case, the complainant has named the petitioner as one of the fourteen accused, who waylaid her brother-in-law Babru Bhan.

She has categorically alleged that all of them caused injuries to him and even assaulted the persons who tried to intervene. The three injured namely Babru Bhan, Ram Kumar and Rajneesh appeared as prosecution witnesses, PW-2 to PW-4, and in their statements, Annexure P-8 to P-10, they specifically named the petitioner as one of the aggressors. In his cross examination, Babru Bhan PW-2 has ascribed specific role to the petitioner and stated that he had shouted and called for 'pharsi' in order to kill him. Further, in his cross examination, Babru Bhan named the petitioner as one of the persons, who along with Kamal and Rohtash dragged him for a distance of about 20 metres before giving blows on his person.

The evidence which has come forth by way of testimony of the three injured witnesses shows the involvement of the petitioner in the offence. The trial Court, therefore, did not commit any error in rejecting the discharge report, Annexure P-6, and summoning the petitioner as an accused to face trial.

Finding no illegality or impropriety in the order impugned herein, the revision petition is dismissed with no order as to cost.

29.01.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No