

CRM-M-24027-2017

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

Sr. No.202

CRM-M-24027-2017

Date of decision : 20.12.2022

Yad Ram Saini and another

.....Petitioner(s)

VERSUS

State of Haryana and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Shashi Kant Gupta, Advocate for the petitioner

Ms.Aditi Girdhar, AAG, Haryana

Mr.Sandeep Kumar Yadav, Advocate for respondent No.2.

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of judgment dated 02.06.2017 passed by learned Additional Sessions Judge, Narnaul, allowed the revision petition filed against the order dated 19.05.2015 passed by learned Chief Judicial Magistrate, Narnaul vide which application filed under Section 319 Cr.P.C. was dismissed.

The facts in brief are that complainant Pawan Kumar stated that on 31.8.2013 at 8 am, when he went to his fields, he saw Moti s/o Hardev was digging the 'mayal' (partition line of two fields), upon which, his father tried to stop him. Upon which, Moti started abusing his father. In the meantime, Yad Ram, Lala, Ram Kishan came there and started beating up his father. Yad Ram inflicted an injury with 'fawara', which hit near his ribs. Thereafter, Lala caught hold of his father whereupon Moti and Ram

Kishan gave fist and leg blows. They fled, leaving his father in the fields. His father was admitted in the Hospital. After about three hours, when he was eating food at his house, he suddenly heard the noise that something has broken. He came outside and saw that Parmod s/o Yad Ram and his brother-in-law dragged his mother from the bathroom in naked condition and brought her to the chowk. Lokesh and Parmod inflicted blows with iron rod and iron pipe respectively to his mother and jija of Parmod also abused her by saying that “Haramzadi Kutti ko nangi pure gaav mei gumayenge”. When he tried to save his mother, Yad Ram and Akash entered in the house and Yad Ram caught hold of him from behind and openly stated that finish them all today. He screamed bachao- bachao. Akash gave a wooden stick blow on his head, which while saving himself, hit his hands. Parmod inflicted an iron blow on the head of his sister-in-law, Santosh, due to which, she fell down. On this, Lokesh removed her saree and abused her also by uttering words “kutti ko nanga karke bahar raste mei dal do”. When his paternal uncle and aunt tried to save her, then Ram Kishan s/o Harish Singh, Lala Ram, Moti Ram and Raju inflicted wooden stick blows to them. Meanwhile, the accused also did vulgar and obscene acts with his mother and bhabhi, 6-7 more persons came there and started saying that they will kill them today. Neeraj, son of his brother Vinod, who was confined to bed as his leg had been fractured in an accident, was also given beatings. On the basis of the said statement, the FIR in question was registered against the accused persons.

Learned counsel for the petitioner contends that the learned Additional Sessions Judge, has committed a grave error while allowing the

application filed under Section 319 Cr.PC, which had been rightly dismissed by the learned trial Court finding no ground to summon the petitioners as additional accused. There is nothing recorded in the FIR as stated by the complainant. The FIR is also an after thought as it was lodged after a delay. The petitioners have been falsely involved as accused.

On the other hand, learned counsel for the complainant states that the learned Additional Sessions Judge after appreciating all aspect of the matter has rightly summoned the petitioners as additional accused. Both the petitioners had been attributed specific injuries and role, which had wrongly been overlooked by the learned trial Court. He therefore, prays for the dismissal of the present petition.

Heard.

For the proper appreciation of the matter, the provisions of Section 319 Cr.PC as well as the manner in which it has been interpreted with regard to its scope, is deemed apposite to be referred at the first instance.

Section 319 Cr.P.C. reads thus:-

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry 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 Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under

sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

A bare reading of the aforesaid section reveals that the word used is when it 'appears' from the evidence that any person not being the accused has committed the offence, the court may proceed against such person.

The intent behind the aforesaid provision being that no person, who even appears to have committed any offence must be let off. This is the primary intent of rule of law.

It is apposite to notice the order dated 2.6.2017 passed by learned Additional Sessions Judge, Narnaul, which reads thus:-

“On perusal of the initial version of the complainant composed in DDR no.15 makes it abundantly clear that the name of these two persons have been specifically cited by the complainant while cording his foremost statement to the Police. Bare perusal of the contents of DDR which is the first base, would muse that the complainant has specifically mentioned the names of Yad Ram and Parmod ka jija i.e. Amit. It has been started that Yad Ram inflicted a Fawra injury on the ribs of his father, and Yad Ram remained a member of group of people, who inflicted injuries to the father of the complainant and they also trespassed the house of the complainant, thereafter, in oddly condition his mother was brought out of the bathing room in a naked state, she was thrown on the floor, was battered, not only this further Yad Ram embraced the complainant to restrict his moments, and he openly declared that kill them all. The accused Yad Ram thus actively participated in commission of crime, as per the affirmation of the complainant, may it be at the

time of recording of DDR or subsequent while appearing in the witness box.

So far as yet another accused namely Amit is concerned, the complainant has described that Parmod ka jija brought the mother of the complainant in an strange condition out of the bathing room, thrashed her on the floor and accused Amit stated that “Harmazadi Kutti ko nangi pure gaav mei gumayenge”.

Of course at the time of passing summoning order the consistent, avowal of the complainant needs to be appreciated, above all the witnesses of the complainant have further yet his assertion, on oath. All the subsequent witnesses have deposed on oath the facts culled out in DDR no.15. As such this court is unable to contradict with the oral oath affirmation of the complainant and his witnesses.

Per contra, Ld. Trial Court in the impugned order, has simply placed reliance, on the report of DSP, but to support the report there is no iota of evidence, as to in what circumstances the DSP ousted these two accused, thus to the mind of the his court, the ld. Trial Court, has manifestly erred, in passing the nature of order impugned herein. This being so, the order passed by the Ld. Trial Court, can not be made to survive.

Reference is required to be made to the judgment of Hon'ble The Supreme Court of India in the case of **Manjeet Singh vs. State of Haryana and others**, (2021) SCC 632, wherein while relying on the judgment of the Constitution Bench in the case of **Hardeep Singh** (supra), 5 questions had framed for considering application under Section 319 Cr.P.C. found the reasoning of the High Court while affirming the order of the trial Court dismissing the application under Section 319 Cr.P.C. on the ground that statement of the complainant indicated over implication and that no injury has been attributed to either of the respondents except that they were armed with weapon and the concerned injuries were attributed to a co-accused and even if some else was present

alongwith him it could not be said that they had any common intention or there was meeting of mind or new that co-accused would be firing, to be not sustainable. Hon'ble the Supreme Court of India set aside the judgment of the High Court on account of the fact that the allegations against the accused persons right from the very beginning were of having committed the offence under which, the FIR had been registered and held that both the trial Court and the High Court had failed to exercise the jurisdiction and/or powers under Section 319 Cr.P.C. As a consequence thereof, the application submitted on behalf of the complainant to summon the private persons was allowed and the trial court was directed to summon them to face trial. Paragraph relating to the above, reads thus:

“The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/ or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial Court and the High Court have failed to exercise the jurisdiction and/ or power while exercising the powers under Section 319 Cr.P.C.”

It may be accentuated that the complainant from the very beginning had stated that petitioner No.1 had inflicted 'fawara' blow near the ribs of his father and that petitioner No.2, being referred to in the FIR as

brother-in-law of Parmod, had been attributed the role of having dragged the mother of the complainant in a naked condition out of bathroom and had been brought to the chowk, while uttering vulgar words to her. It has also come in his statement while appearing as PW1, that initially he was not aware of the name of petitioner No.2, therefore, he was referred to as the brother-in-law of Parmod. Be that as it may, specific role had been attributed to him in the FIR itself, thus, the appellate Court has rightly passed the order.

Thus, in view of the law laid down in the the case of Manjeet Singh (supra), wherein Hon'ble The Supreme Court of India also set aside the orders passed by the trial Court and the High Court having failed to exercise the jurisdiction under Section 319 Cr.P.C. inspite of the fact that the allegations against the accused persons right from the beginning were of having committed the offence based on which the FIR had been registered, which while considering the facts of the present case, this Court finds no illegality of perversity in the impugned order dated 02.06.2017 passed by learned Additional Sessions Judge, Narnaul, that calls for any intervention. As such, the present petition is dismissed being devoid of merit.

Nothing herein shall be treated as an expression on the merits of the case and the trial court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

20.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No