

CRM-M-48827-2017

**(235) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-48827-2017

Date of decision : 11.03.2022

Sanjeev

... Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.K. Prajapati, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Nihul Pratap Singh, Advocate for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 24.04.2017 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Ambala, whereby an application under Section 319 Cr.P.C. moved by the petitioner-complainant for summoning respondent Nos.2 to 7 as additional accused has been dismissed as also the order dated 17.10.2017 (Annexure P-1) passed by the learned Additional Sessions Judge, Ambala, whereby the appeal preferred by the petitioner against the order dated 24.04.2017, has been dismissed and the order of the learned trial Court has been affirmed.

2. The brief facts of the case are that an FIR No.357 dated 14.12.2015 registered under Sections 148, 149, 323, 324, 506 and 34 IPC at Police Station Mahesh Nagar came to be registered against 10

accused. The Investigating Agency after conducting the investigation submitted its report under Sections 148, 149, 323, 324, 326, 506 and 34 IPC against Amit Kumar S/o Rajeshwar, Vinod S/o Ram Pal, Paras and Amar S/o Raj Kumar, the other six accused namely, Surender, Kaushal Pal, Nand Lal S/o Shyam Singh, Suraj Bhan @ Rinku S/o Padam Pal, Padam Pal and Pardeep S/o Aflatoun were to be found innocent placed in column No.2. The trial commenced and during the course of the trial an application under Section 319 Cr.P.C. was moved for summoning respondent Nos.2 to 7. The trial Court came to the conclusion vide order dated 24.04.2017(Annexure P-2) that there was no evidence to summon respondent Nos.2 to 7 and the evidence available was insufficient to fasten *prima facie* guilt of the said respondents. It was also held that there was no allegation that the Investigating Agency had not conducted the investigation fairly and thus, the mere recording of the statement of the complainant without anything more was not enough to summon the accused.

3. The petitioner-complainant preferred a revision petition against the said order of the trial Court dated 24.07.2017 (P-2) before the learned Additional Sessions Judge, Ambala. The contention of the petitioner-complainant was that he had specifically named the accused in his statement under Section 161 Cr.P.C. as also in his deposition as PW-1. As per him, specific injuries were attributed to the proposed accused but the trial Court had illegally and arbitrarily ignored the evidence and dismissed his application under Section 319 Cr.P.C. The proposed accused on the other hand contended that there no specific role attributed

CRM-M-48827-2017

3

to the respondents, who were sought to be summoned. The learned Sessions Court discussed the evidence of the complainant as also the Medico Legal Report and came to the conclusion that he had received seven injuries and all of them were with sharp edged weapons and therefore, his oral version was contrary to the medical evidence, inasmuch as, there was no injury with a blunt weapon on his person. The Court also stated that the petitioner-complainant when appeared as PW-1 before the Court only reiterated his earlier version given to the police and no new fact had come on record and thus, while relying on the judgment of Hon'ble Supreme Court in 'Hardeep Singh Vs. State of Punjab, 2014(1) RCR (Criminal) 623' and after hearing both the parties and going through the entire material and documents on record, dismissed the application under Section 319 Cr.P.C.

4. Against the said order dated 17.10.2017(Annexure P-2) of the learned Additional Sessions Judge, Ambala as also against the order dated 24.04.2017 (P-2) of the Judicial Magistrate, 1st Class, Ambala, the present petition for quashing has been filed.

5. The learned counsel for the petitioner has brought to the notice of this Court that vide order dated 20.12.2017 notice in this case had been issued only to respondent No.2-Surinder (the proposed accused). His contention is that Surinder, as per the FIR had been attributed the role of having caused a '*Dhanda*' blow on the left hand of the complainant. The counsel refers to the MLR of the petitioner-complainant-Sanjiv Kumar, which shows that injury No.7 on the left

dorsum hand adjoining the wrist has been caused with a blunt weapon.

The said injuries are reproduced herein below:-

“1. 3CM X 2CM WITH 3CM DEEP SHARP INSCISED WOUND OVER LATERAL ASPECT OF RIGHT KNEE ALONG WITH BLEEDING AND SWELLING.

2. 2CM X 2CM WITH 2CM DEEP SHARP INSCISED WOUND OVER MID OF RIGHT SHIN WITH BLEEDING WITH CREPITUS HEARD WITH SWELLING.

3. 5CM X 3CM WITH 3CM DEEP SHARP INSCISED WOUND OVER MEDIAL ASPECT OF RIGHT LEG WITH MASSIVE BLEEDING OBLIQUELY PLACED.

4. 2CM X 2CM WITH 3 CM DEEP SHARP INSCISED WOUND JUST ABOVE RIGHT MALLEOLUS WITH BLEEDING HORIZONTALLY PLACED.

5. 6CM X 3CM WITH 4 CM DEEP SHARP INSCISED WOUND OVER MEDIAL ASPECT OF LEFT LEG WITH BLEEDING OBLIQUELY PLACED.

6. 2CM X 1CM WITH 1CM DEEP SHARP INSCISED WOUND OVER LEFT MID SHIN BLEEDING.

7. 4CM X 3CM WITH 1 CM DEEP FLAPPY LACERATION OVER LEFT DORSUM HAND ADJOINING THE WRIST WITH BLEEDING WEAPON BLUNT ADV XRAY/ORTHO.

S1S2 HEARD

GCS 12/15

ADV 1, 2, 3, 4, 5, 6 ARE SHARP INSCISED WITH XRAYS/ORTHO OPINION

NATURE AFTER OPINION

NODULAR SWELLING OVER LEFT LATERAL HEAD WITH H/O LOC++

ADV SURGEON OPINION/XRAY

PAT C/O LOC WITH MASSIVE BLEEDING FROM INJURY SITES HIS TROUSER WITH

*CORRESPONDING INJURY SITES SEALED AND
HANDED OVER TO POLICE
P/A WAS TENDER AND SWELLING IN RIGHT
HYPOCHONDRUM
CHEST B/L CLEAR.”*

6. He thus, contends that the medical evidence is completely in consonance with the ocular evidence so far as, respondent No.2-Surinder is concerned and he thus, ought to have been summoned to face trial.

7. The learned counsel for respondent No.2 on the other hand states that the orders of the learned trial Court and of the Lower Appellate Court were rightly passed. Mere repetition by the complainant in his deposition in Court as PW-1 is insufficient to fasten liability on respondent No.2/proposed accused. He also submits that the medical evidence is not in consonance with the ocular evidence as has been rightly observed by the learned Lower Appellate Court.

8. I have heard the learned counsel for both the parties.

9. Quite rightly, the notice in this case had been issued only to respondent No.2-Surinder and qua the other proposed accused, the orders of the learned trial Court and of the Lower Appellate Court have not been disturbed. So far as, respondent No.2 is concerned, he has been attributed a specific injury with a 'Dhanda' on the left hand of the complainant. The finding of the learned Lower Appellate Court that the medical evidence is not in consonance with the ocular evidence is not borne out from the record. On the contrary, as has been mentioned above, there are seven injuries on the person of the complainant

CRM-M-48827-2017

16

including one i.e. Injury No.7 with a blunt weapon attributed to respondent No.2.

10. In view of the above, the present petition is allowed and the order dated 17.10.2017 (Annexure P-1) passed by the learned Additional Sessions Judge, Ambala and the order dated 24.04.2017 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Ambala, are hereby set aside and respondent No.2/Surinder son of Shyam Singh, is ordered to be summoned under Section 319 Cr.P.C. to face trial as an additional accused along with the accused already facing trial.

(JASJIT SINGH BEDI)
JUDGE

11.03.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No