

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2418 of 2018

Date of Decision:11.11.2022

Irshad

---Petitioner

versus

State of Haryana and others

---Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sarfraj Hussain, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana

Mr. Vipul Aggarwal, Advocate
for private respondents

JAGMOHAN BANSAL (ORAL)

The petitioner through instant petition under Section 401 Cr.P.C. is seeking setting aside of order dated 1.5.2018 whereby Additional Sessions Judge, Mewat has dismissed the application of the petitioner filed under Section 319 Cr.P.C.

The facts emerging from record and which are necessary for the adjudication of present petition are that one person namely Irshad son of Moosa lodged a complaint with police that on 16.4.2016 while he alongwith his relative Jakir son of Rahim Khan was returning to his home from the fields found Nasim son of Suleman and Mehboob son of Wali Mohammad standing armed with *lathis and dandas*. They started assaulting him with lathis and dandas and dragged him inside their house. Jakir who was accompanying him rushed to his family

members and his family members namely Moosa, Sher Mohamed, Taffajul and

Irshad came for his rescue. Nabbu, Abdulla, Rehmatulla, Wahab, Gaffar, Badru, Kammu, Harun, Isub, Jafu, Aabid, Ashif, Majida, Moosa son of Abdul Rehman, Rashida and Akram armed with lathis, dandas, farsa etc. came there and started beating his family members. The aforesaid assailants after causing injuries left the spot. The complainant and his family members were taken away to Civil Hospital, Punhana where doctor referred them to Civil Hospital, Mandikhera. Moosa, Sher Mohamed, Taffajul and Irshad were further referred to Medical College, Nalhar.

On the afore-stated complaint, FIR No. 200 dated 17.4.2016 under Sections 148, 323, 324, 341, 342, 307, 506 and 149 IPC was registered at Police Station, Punhana. The FIR was registered against 18 persons, however, the police after completing investigation filed challan against 11 of them.

The petitioner preferred an application under Section 319 Cr.P.C. seeking summoning of six persons who are arrayed as respondents No. 2 to 7 herein. The matter came up for consideration before Additional Sessions Judge, Nuh, who vide order dated 1.5.2018 dismissed application under Section 319 Cr.P.C. of the petitioner.

Learned counsel for the petitioner submits that police during investigation has wrongly exonerated the respondents. The role of each accused was specifically disclosed in the complaint and Moosa father of Irshad in his deposition dated 21.2.2017 has categorically disclosed injuries suffered by him and role of each respondent. Learned ASJ has miserably ignored the role attributed to each respondent and acting in a mechanical manner passed impugned order.

Learned State counsel submitted that police has conducted fair enquiry and persons not found in scuffle had been exonerated and no person can be implicated just on the asking of complainant or victim.

Learned counsel for the private respondents would submit that trial

court has passed a reasoned and speaking order. There is no infirmity in the impugned order, thus, interference on the part of this Court is unwarranted.

I have heard arguments and gone through the record with the able assistance of learned counsel for the parties. The petition is bereft of merit.

Learned trial court has recorded a finding that there is only one injury on the head of victim which is attributed to Suleman. It has been further recorded that persons whose role was disclosed are already facing trial.

The power conferred by Section 319 Cr.P.C. cannot be exercised in routine and mechanical manner. The power to summon any person as additional accused is an extraordinary power which needs to be exercised judicially and sparingly. It is settled proposition of law that criminal law cannot be put into motion in a mechanical manner because it directly affects life and liberty of a person.

Learned counsel for the petitioner vehemently relied upon deposition dated 21.2.2017, made by Moosa before trial court. From the perusal of statements of Irshad and Moosa, it is hard to believe that 18 persons at one point of time attacked upon them still they were competent to recognize by name each of them as well as recall weapons used and attribute injuries caused by them. Learned trial court has noted that there is only one injury, thus, there was no reason to believe that private respondents had caused injuries to the victim.

A Five-Judge Bench judgment of Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and thereafter other Benches of Hon'ble Supreme Court in a plethora of judgments have held that a person cannot be summoned mechanically and Court is supposed to examine the veracity of the additional evidence brought on record. There is no need of cross-examination of witnesses and trial Court can summon any person as additional accused if from the evidence either documentary or oral, it comes out

that proposed accused is part of the alleged offence.

In the case in hand, the police has conducted thorough investigation and there is no allegation of bias against the police. Even otherwise, there is nothing on record to indicate that the private respondents are influential people or they had influenced the police officials. There is no additional evidence on record which could compel the trial Court to summon the private respondents under Section 319 Cr.P.C.

In view of the above facts and circumstances, this Court is of the considered opinion that there is no ground to interfere with impugned order dated 1.5.2018 passed by learned ASJ, Mewat. The petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

11.11.2022
paramjit