

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

**CRR-468-2022 (O&M)
Reserved on: 28.07.2022
Pronounced : 01.08.2022**

Udaypal Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Balram Prashar, Advocate for the petitioner.

HARNARESH SINGH GILL, J.

Prayer in the petition is to set aside the order dated 18.02.2021 passed by the learned Additional Sessions Judge, Jhajjar, vide which an application under Section 319 Cr.P.C. for summoning the private respondents as additional accused preferred by the petitioner, was dismissed.

As would appear from the facts on record, on a complaint of Sunil Saini, FIR No.116 dated 21.02.2016 under Sections 148, 149, 186, 188, 302, 307, 435, 436, 449, 395, 323, 326 IPC and Section 25 of the Arms Act, was registered at Police Station Jhajjar, against some unknown persons. As averred in the complaint, a mob of around 400-500 miscreants armed with deadly weapons, entered the area of a particular community with a motive to take a revenge; that the said mob set on fire a Dharamshala/Community Centre, murdered two persons; injured several persons and had blasted 30-40 houses of the said community and that the petitioner was also one of the

victims, as at that time, the petitioner was standing on the terrace.

It is vehemently argued by the learned counsel for the petitioner that though, the petitioner, while appearing as PW-15 has given the details of the whole incident of 21.02.2016 yet the application under Section 319 Cr.P.C. filed by the petitioner, has been dismissed by the learned Additional Sessions Judge, without taking into consideration the contentions of the petitioner, whereas a specific role attributed to the private respondents, is evident from the CCTV footage. It is further submitted that the testimony of the petitioner and the evidence available on record, have not been properly appreciated and rather a heavy onus was placed on the petitioner to prove that he had seen the occurrence recorded in the CD/PEN Drive. Learned counsel would further contend that even the investigation agency did not properly investigate the matter and it looks that the sole motive of the investigation agency was to protect the accused persons.

It is also argued that the petitioner has specifically named, Vicky, armed with a *Doga* (fire instrument), Yogesh @ Bablu and Sonu, being part of the mob; that the petitioner had saved his family members by dropping them to the house of a backside neighbor and that he had saved himself and his son by locking themselves into the washroom located at the ground floor of the house. It is, thus, submitted that once the petitioner has specifically named the accused involved in the crime, the very approach of the trial Court in dismissing the application under Section 319 Cr.P.C. is legally untenable.

I have heard the learned counsel for the petitioner and have also gone through the documents on record.

The learned trial Court has noticed in detail in the impugned order that during investigation, the statements of the petitioner were recorded thrice i.e. on 22.02.2016, 12.03.2016 and 13.05.2016. The application under Section 319 Cr.P.C. was moved after a lapse of 2 ½ years of the occurrence and the petitioner was not an eye-witness to the occurrence, as firstly he had shifted his family members to the house of his neighbor and further saved himself and his son by locking themselves in the washroom of his house. As a matter of fact, an application dated 04.10.2017 seeking further investigation and for placing on record the DVD for identification of the accused preferred by complainant Dr. Sunil Saini, who himself is a practicing Lawyer and has appeared as PW-2, was dismissed vide order dated 11.07.2018 passed by the learned Additional Sessions Judge, Jhajjar.

The relevant part of the order dated 18.02.2021, would read as under:-

“42. The cumulative inference of the above discussion is that PW15 is not at all the eye witness of the occurrence recorded in pendrive and compact disc. The above persons i.e. Sh. Randhir Singh Advocate, Yashvir Singh Advocate, Sheela Phogat, Vicky, Sonu and Yogesh @ Bablu neither instigated the mob nor the mob collected in front of their house. They also did not provide any weapon to the mob. The incident recorded in the pendrive/CD is not on much importance viz-a-viz above persons i.e. Sh. Randhir Singh Advocate, Yashvir Singh Advocate, Sheela Phogat, Vicky, Sonu and Yogesh @ Bablu in the case in hand. Therefore, the testimony of PW15 that on 21.02.2016, mob around 4000-5000 collected in front of the house of Randhir Singh Advocate; the mob collected weapons i.e. farsa, lathi, axe, jaili, ballam, bandook, pistol and cane of petrol; and his son Yashvir directed the mob and told the mob for burning and looting houses and shops is not at all

supported by the incident recorded in the pendrive/CD. Therefore, there is no reason for this Court to believe the testimony of applicant-PW15.

43. For the forgoing reason, the applicant-PW15 has failed to make out any case for summoning Sh. Randhir Singh Advocate, Yashvir Singh Advocate, Sheela Phogat, Vicky, Sonu and Yogesh @ Bablu as additional accused under Section 319 Cr.P.C. The above stated ruling relied upon by the counsel for the applicant-PW15 us of no help to applicant-PW15. Accordingly, the application moved by applicantPW15 under Section 319 Cr.P.C. stands dismissed.”.

As noticed above, the complainant was not an eye-witness and rather he was a victim and the application dated 04.10.2017 seeking further investigation and for placing on record the DVD for identification of the accused was dismissed vide order dated 11.07.2018 passed by the learned Additional Sessions Judge, Jhajjar. This Court is of the view that there is no irregularity in the order dated 18.02.2021 passed by the learned Additional Sessions Judge, Jhajjar, as the assertions made by the petitioner appears to be based on assumptions, whereas the fact remains that the facts and circumstances on record do not establish that he was present at the place of occurrence. It is admitted by the petitioner that his statements were recorded thrice by the investing agency, but in his statements he had never named the private respondents, as named in his application under Section 319 Cr.P.C. moved for summoning them as additional accused. The examination-in-chief of the complainant was recorded on 07.09.2017 and his cross-examination was deferred to 21.09.2017 on the request of the learned counsel for the accused. This clearly makes that there was sufficient opportunity with the petitioner to raise objection that his testimony was not recorded properly.

In view of the above, this Court is of the view that the testimony of the petitioner while appearing as PW-15 has rightly been ignored by the trial Court while passing the impugned order. Thus, finding no merit in the present petition, the same is hereby dismissed.

01.08.2022

Mangal Singh

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?

Whether reportable?

Yes/No

Yes/No