

203

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

**CRM-M-13416-2019
Date of decision : 22.11.2023**

GURNEK SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vipul Dharmani, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. P.S. Paul, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Present petition is directed against the order dated 2nd of November, 2016 passed by JMIC, Rupnagar whereby application filed by the prosecution under Section 319 Cr.P.C. has been allowed and the petitioner has been ordered to be summoned as an additional accused.

2. FIR was registered on the complaint made by one Harminder Singh son of Hakam Singh alleging as under :-

“xxxit is requested that I, Harminder Singh son of Hakam Singh Caste Tarkhan am a resident of Village Bassowal Police Station Anandpur Sahib District Rupnagar. On dated 30/11/2014 at about 9 O'clock at night my son Bakhshish Singh was going to his some work. When my son reached at bridge of Village Bassowal then all three boys whose names are as follow: 1.

Harvir Singh son of Jaswant Singh Resident of Ganguwal B.B.M.B. Colony Police Station Anandpur Sahib 2. Harnek Singh Phoji son of Bhadar Singh resident of Village Mangewal Bag Police Station Anandpur Sahib Tehsil Anandpur Sahib District Rupnagar 3. Ajay Bhatti resident of Ghambirpur Upper Police Station Anandpur Sahib Tehsil Anandpur Sahib District Rupnagar, who had a silver coloured motorcycle, surrounded my son and started beating my son with base-ball (broad danda) without any reason. Which hit my son on his head and also broke his right ankle, due to which my son fainted and thereafter they picked him on the motorcycle and threw him in a tower field adjacent to the Chandesar road, opposite to Agampur Grain Market. On second day on 01/12/2014 in the morning 6 o'clock we received a phone call from unknown person that your son is lying unconscious condition in the field having a tower adjacent to the Chandesar road, opposite to Agampur grain market and his motorcycle has been thrown after breaking the same near my son. Thereafter we all family members went to the said mentioned place and saw that my son was lying unconscious and then we picked him and took him to doctor at Ganguwal and also took medicine and when he did not come to senses then we took him to Mata Nanki Hospital, who applied plaster on his ankle. When he did not come in his senses, then they referred him to Sector 32 Hospital at Chandigarh. He stayed admitted there from 02/12/2014 to 08/12/2014 and at the said Hospital my son got into senses. Hospital has discharged my son after giving medicines and we returned back to home. Thereafter on dated 16/12/2014 statement of my son was got recorded at Police Station Anandpur Sahib (Copy of which is attached herewith). After getting his statement recorded on 18/12/2014 my son again suffered fits and he again become unconscious. We again took him to Sector 32 Hospital where they again admitted him and my son gained conscious after two days then he started behaving like a retard person and thereafter officials of the Hospital got admitted my son at its mental ward. That my son is still admitted

in Sector 32 Hospital. Therefore, keeping in view supra, you are requested to register FIR of my son. With regard to which an application has already been given on dated 1/612/2014 and you have also been requested twice or thrice by me, however but no action has been taken so far on the same. Therefore, you are again requested that after registering the FIR of my son strict action may be taken against the accused persons and they be punished accordingly, who are still free and justice be done to my son, who is still fighting between life and death. I shall be thankful to you. Xxx”

3. The petitioner was wrongly named as Harnek Singh. After investigation the petitioner was found to be innocent and was placed in column No.2. Complainant and victim appeared in the witness box as PW-2 and PW-3 respectively and reiterated all the versions as given in the FIR which led to filing of the application under Section 319 Cr.P.C. by the complainant seeking summoning of the present petitioner as well as one Harvir Singh as additional accused.

4. The aforesaid application stands allowed vide impugned order. After perusing the impugned order this Court finds that the same is bereft of any reasoning. So much so the Trial Court has not even bothered to look at the investigation report as well as the other evidence available on record to record its satisfaction that the evidence against the present petitioner is more than *prima facie* which is the test laid down by the Apex Court in the case of '**Hardeep Singh vs. State of Punjab**', 2014(3) SCC 92.

5. In view of above, impugned order is hereby set aside.

6. Trial Court is directed to decide the application afresh within a period of 4 weeks in accordance with law.
7. Ordered accordingly.

November 22, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No