

CRM-M-40859-2014

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

CRM-M-40859-2014 (O&M)

Reserved on: 04.05.2023

Pronounced on: 22.05.2023

Darbari Lal

... Petitioner(s)

Versus

State of Punjab & ors.

...Respondent (s)

Present:- Mr. Munish Puri, Advocate
for the petitioner(s).

Mr. Virat Rana, AAG, Punjab.

Mr. Pankaj Bains, Advocate for
Mr. Munish Kapila, Advocate
for respondents no.2 and 3.

ANOOP CHITKARA, J.

Aggrieved by dismissal of application moved under Section 319 CrPC for summoning of respondents no.1 to 3, the petitioner-complainant has come up before this Court under Section 482 CrPC.

2. As per the version of the petitioner-complainant, on 3.1.2009, the respondents Gurdev Singh, Sukhdev Singh and Lakhwinder Singh had beaten the son of his nephew Kuldeep Saini and therefore, they were summoned at the police station, but the said accused did not turn up at the police station. After coming back from police station, when the petitioner and his son were passing through the village Gurudwara on way to their house, the respondents-accused along with their many accomplices were standing in the street armed with *dangs* and iron *khoncha*. On seeing them Gurdev Singh and Natha Pardhan raised *lalkara* to catch hold of them and kill, as they had given statement against them in the police station. Except Natha Singh, the other accused including the petitioners inflicted injuries upon them. On alarm being raised, their relatives and co-villagers gathered and then, the accused ran away along with their weapons. Thereupon, the petitioner and his son were admitted to hospital. It has been averred that despite specific injuries were attributed to the respondents-accused, but they were kept in column no.2. Therefore, the petitioner filed an application under Section 319 CrPC for summoning of respondents as accused, however, the said application was

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dismissed by the trial Court vide order dated 29.1.2013. The petitioner challenged the said dismissal order by way of revision petition and the revisionary Court allowed the revision petition and set aside the dismissal order dated 29.1.2013 and remanded the matter back to the trial Court to re-decide the application under Section 319 CrPC, but the trial Court again dismissed the said application vide order dated 7.12.2013. Thereafter, the petitioner again filed revision petition against the order dated 7.12.2013 and learned Sessions Judge dismissed the same vide order dated 11.11.2014 with the observation that the petitioner kept mum to the act of the police exonerating the respondents-accused and not submitting challan against them. Aggrieved by aforesaid order dated 11.11.2014, the petitioner has come up before this Court.

REASONING:

3. I have heard counsel for the parties and perused the record.
4. Petitioner - Dalbari Lal had filed an application dated 23.11.2011 under Section 319 CrPC and after appearing as PW-1. In his examination-in-chief, he levelled allegations against Gurdev Singh and Sukhdev Singh @ Deba, respondents no.2 and 3, respectively. He testified that on 3.1.2009, Lakhwinder Singh, Gurdev Singh (respondent no.2) and Sukhdev Singh (respondent no.3) had beaten Rinku son of nephew of the petitioner and in that regard, Rinku had given an application against them. In that connection, they had gone to the police station, but none was present on behalf of the accused persons in the police station. On their return from police station, when the petitioner along with his son Rajesh Kumar were entering their *haveli*, at that time, Rajesh was ahead of him. At 4-30 p.m., they reached in front of Gurudwara Saib, then Lakhwinder Singh armed with *dang*, Gurdev Singh (respondent no.2) armed with *dang* and Sukhdev Singh (respondent no.3) armed with iron *khoncha* and Natha Pardhan (dead) along with their associates were standing in the street. Upon seeing them coming, Gurdev Singh and Nathan Pardhan raised a *lalkara* that 'both of them gave statement against them in police station and they must be killed. After that except accused Natha Singh (since deceased), all other accused inflicted injuries upon his son Rajesh Kumar with their respective weapons. He raised commotion and at that time, Lakhwinder Singh caught hold of his right arm and aforesaid Natha caught hold of his left arm and Sukhdev Singh attacked him with iron *khoncha*, which struck his left ear on the head. Gurnam Singh also attacked with *dang*, which struck on his left knee. Thereupon, people came and rescued them. In cross-examination, petitioner Darbari Lal admitted that he had not filed any complaint against the accused persons. He also admitted that there were other cases registered against him at the instance the accused persons. He further admitted that Rinku had filed complaint in the police station. The petitioner had made this statement on 23.9.2011. After that, he had filed an application

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under Section 319 CrPC which bears date 23.11.2011 i.e. after making statement in the Court. In his application under Section 319 CrPC, he reiterated the allegations which he had made in his testimony before the Court.

5. Vide detailed order dated 29.01.2013, concerned Chief Judicial Magistrate dismissed the application. Initially, the police did not add private respondents no.2 and 3, as accused, and kept them in column no.2 i.e. as suspects. Petitioner had levelled similar allegations in the FIR, but the police did not launch prosecution against the accused. He did not challenge the police action of non-addition; however, later on, he filed an application under Section 319 CrPC on the same facts, which had been belied by the police in its investigation. The petitioner did not even seek further investigation after the police had absolved the respondents no.2 and 3. At the time of framing of charges, the Court was aware of the contents of the FIR and also of not arraigning of respondents no.2 and 3, as accused and charges were confined to the accused who were being prosecuted. At that stage, the complainant did not ask for further investigation. Moreover, the trial Court also did not find the investigation to be biased and did not on its own proceed to call for further investigation against respondents no.2 and 3. At that stage, the Court was aware of its powers under Section 319 CrPC.

6. Now, the complainant named respondents no.2 and 3 as accused, in his testimony and after that, filed fresh application. In his cross-examination, he admitted that there was another FIR which had been registered against him at the instance of private respondents. A perusal of the cross-examination of petitioner Darbari Lal reveals that the main aggrieved person was Rinku, who had filed a separate complaint. The specific stand of the petitioner in the opening lines of his cross-examination that he had not filed any complaint against the accused persons.

7. Thus, arraigning them as accused at such a belated stage is nothing but abuse of the process of law under Section 319 CrPC.

8. Therefore, for the reasons mentioned above, this Court do not find merit in the present petition and the same is dismissed. However, since the trial is hanging since long, at the instance of the petitioner, be expedited.

(ANOOP CHITKARA)
JUDGE

May 22, 2023
AK

Whether speaking/reasoned: Yes
Whether reportable: No.