

2023:PHHC:081371

CRR No.1436 of 2023
Date of Decision: June 02, 2023

Versus

State of Haryana and others ...Respondents

Present:- Mr. Jai Bhagwan Sharma, Advocate
for the petitioners.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition is to set aside order dated 10.05.2023 passed by learned Judicial Magistrate Ist Class, Faridabad whereby the petitioners have been summoned on an application under Section 319 Cr.P.C, to face prosecution prosecution under Sections 323, 325, 506 and 34 IPC in a case arising out of FIR No.573 dated 30.08.2016 registered at Police Station Saran, Faridabad.

It is contended by learned counsel for the petitioners that though petitioners were named in the FIR lodged by one Rajiv Kumar but during investigation, the petitioners were found innocent and so challan was filed only against Mool Chand, Luv and Gopal. In the confessional statement made by afore-said Mool Chand, Luv and Gopal, they had stated before the Investigating Officer that the petitioners were not involved anywhere. Besides, two neighbours and eye witness, namely, Ram Saran and Kamal Shankar had also filed

affidavit before the Investigating Officers to the effect that there was a minor scuffle between Mool Chand and the complainant and that the petitioners had not participated in the alleged fight. Learned counsel further contends that later on complainant Rajiv Kumar was examined before the trial Court on 29.05.2018 wherein he reiterated the contents of the FIR and named the petitioners in his examination-in-chief and, thereafter, application under Section 319 Cr.P.C was moved, which has been allowed by way of the impugned order, without appreciating the facts. The impugned order is stated to be the result of non-application of mind and ignoring the facts which had emerged during investigation and also the legal position explained by the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92.**

Having considered the submissions of learned counsel for the petitioners, I find no merit in the revision.

Perusal of the FIR (Annexure P.1) reveals that it was specifically alleged by the complainant- Rajiv Kumar that on 19.08.2016 at about 10 o'clock, he was present at home, when Mool Chand along with Luv, Mohit, Gaurav, Mohit and Gopal, forcibly entered his house challenging him for making a complaint against his dairy and then Mool Chand hit a shovel on his head; Luv hit iron rod in his right hand and the other three namely, Gaurav and Gopal attacked him with kicks and punches, causing hurt to him on his chest and eye. Neighbours come forward to save him. The assailant also threatened him to eliminate in the future, in case he made any complaint. During investigation, medical report was collected. Since one of the injury was found to be grievous,

Section 325 IPC was also added.

Report under Section 173 Cr.P.C. (Annexure P.2) reveals that after verification by the Police Station Incharge, Gaurav and Mohit, i.e. petitioners were found to be innocent. However, there is absolutely no mention in the police report under Section 173 Cr.P.C as to what was the basis of declaring the petitioners as innocent despite there being specific allegations of the complainant naming the petitioners to be also amongst the assailants.

Learned counsel for the petitioners has drawn attention towards affidavits Annexures P.6 and P.7 of Ram Saran and Kamla Shankar, contending that they are the neighbours and eye witnesses and these affidavits were filed before the Investigating Officer as per which petitioners were not named to have participated in the dispute. To the specific query put by this Court to learned counsel, he conceded that said Ram Saran & Kamla Shankar are not cited by the prosecution as eye witnesses of the occurrence in its report under Section 173 Cr.P.C, which even otherwise is evident from the said report under Section 173 Cr.P.C (Annexure P.2).

In his statement recorded during trial on 29.05.2018 (Annexure P.8), complainant Rajiv Kumar has reiterated his version on oath as per which petitioners Gaurav and Mohit were also accompanying the other accused, who had entered his house and had caused injuries to him along with others.

In view of the afore-said facts and circumstances, no fault can be found with the impugned order dated 10.05.2023, whereby the

petitioners have been summoned to face prosecution on the application under Section 319 Cr.P.C.

Dismissed.

June 02, 2023

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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No