

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

(116)

CRR-1454-2023 (O&M)

DATE OF DECISION:- 23.11.2023

SHIV SHANKAR @ RINKU

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Ms. Pinki Mehla, Advocate
for the petitioner.

Mr. Munish Sharma, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J. (ORAL)

1. Present revision petition has been filed assailing order dated 26.04.2023, whereby application filed under Section 319, Cr.P.C. for summoning respondents No.2 to 14 as additional accused, has been declined by learned Additional Sessions Judge, Kaithal in FIR No.241 dated 29.08.2019 registered for offences under Section 307, 323, 324, 325, IPC read with Section 34, IPC at Police Station Cheeka, District Kaithal, Annexure P-1.

2. Factual matrix leading to the filing of the petition is that FIR, Annexure P-1, has been registered by Mahender Singh stating that he is a beggar. On 22.03.2019 along with his nephew when he went to

the village temple at around 08:00 A.M. to light incense sticks, they were attacked by Mela Ram son of Pratap, Mela Ram son of Bohpa, Shamsheer son of Hardeep, Shamsheer son of Kalu and Pratap son of Harsh, who were armed with Gandasis and sticks. Other inhabitants of the village also joined them. His nephew was injured. All the assailants were Jats. Upon conclusion of investigation, challan, Annexure P-5, was filed, wherein the above named persons were found to be involved in the offence. However, names of Harsh, Nippa, Harry, Jagroop, Jagar, Charanjeet Kaur, Sinder Kaur, Dara Singh, Reshma, Suresh, Sonu, Kulwinder and Gurmeet (respondents No.2 to 14) were kept in column No.2.

3. Counsel for the petitioner has contended that in his examination as prosecution witness No. 1, petitioner has specially named respondents No.2 to 14 and ascribed injuries to them. She submits that despite moving an application, Annexure P-2, for summoning respondents No.2 to 14 as additional accused, it has been erroneously declined by the learned Sessions Court.

4. Advance copy of the petition has been served upon the State.

5. Upon instructions, State counsel has opposed the petition. He has made a detailed reference to the challan to submit that no material was found against the private respondents.

6. I have heard counsel for the parties and perused the paper-book.

7. Section 319, Cr.P.C confers discretionary and extra ordinary power on the Court, which is to be exercised sparingly and only when the circumstances of the case so warrant. The power is not to be exercised in a casual and cavalier manner, but when there is strong and cogent

evidence that a person not being an accused has committed an offence for which he can be tried together with other accused. In ***Sukhpal Singh Khaira Versus State of Punjab (2023) 1 SCC 289***, a Constitution Bench, while laying down the guidelines has held that if the competent court finds evidence or if application under Section 319, Cr.P.C. is filed regarding involvement of any other person in the offence, based on evidence recorded at any stage in the trial, before passing of the order on acquittal or sentence, the Trial Court shall pause the trial and proceed to decide the fate of the application. The Trial Court shall apply its mind on the fact as to whether such accused proposed to be summoned can be tried along with the other accused or separately. In ***Labhuji Amratji Thakor and others Versus State of Gujarat and another 2019 (1) RCR (Criminal) 1***, Hon'ble Supreme Court has observed that merely because the Court has power under Section 319, Cr.P.C. to proceed against any person at any stage does not mean that the Court can mechanically issue the process. The Court has to consider the substance of evidence, which has been led.

8. Turning to the facts of the present case, it deserves to be noticed that in the complaint moved by Mahender, which forms the basis of the FIR, Annexure P-1, private respondents have not been named. The present petitioner, who has been injured, had supported the statement of the complainant, but did not level any allegation against the private respondents. On the basis of material collected during investigation, eleven accused have been charge-sheeted and are facing trial. There is nothing on the record to show that till the recording of the statement of the complainant under Section 161, Cr.P.C. on 12.09.2019, i.e., after six months of the lodging of the FIR, that the petitioners were involved. The

improvement in the version, months after the registration of the FIR is writ large. Record further shows, that the private respondents are probably being implicated falsely for the reason that in a cross case pertaining to the same occurrence, i.e., FIR No.84 dated 22.03.2019, a similar application has been moved implicating some more inhabitants of the village. Furthermore, as noticed by the learned Additional Sessions Judge in the order under challenge, in such a large group of persons where there are numerous assailants and multiple injuries have been inflicted, it is not possible to ascribe roles with accuracy. It is not possible that the additional accused, who are being sought to be summoned, were overlooked by the complainant while making the complaint to the police.

9. This Court, therefore, does not find any ground to differ with the reasoning recorded by the learned Sessions Court.
10. Finding no illegality or infirmity in the impugned order, this Court is not inclined to interfere with it in the exercise of the revisional jurisdiction.
11. Petition being devoid of merit, is hereby dismissed.
12. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)

JUDGE

23.11.2023

Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No