

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

203

CRR 230 of 2018 (O&M)
Date of Decision: 11.12.2023

Rajender Singh

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Amit Chaudhary, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Amandeep, Advocate
for respondents No. 4 and 5.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 02.09.2017 passed by the Additional Sessions Judge, Hisar, whereby, the application moved by the petitioner/complainant under Section 319 Cr.P.C. was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of statement made by Rajender Singh, petitioner and the same is reproduced below:-

“That statement of Rajender Singh S/o Dalel Singh, Caste Jatt, resident of Garhi and aged about 42 years,

Mobile No. 98122-15172, stated that I am resident of above mentioned address and working as a farmer. We are seven brothers and one sister. We own 18 acres of land and we have 12 acres land on one side and 6 acre on other side. Where we have 12 acres of land, my uncle Balwant and Balbir also having 4 ½ acres of land. We have purchased the share of land of Roshni D/o Balwant and we had to irrigate the said land, that is why I and my brother Raj Karan, Ram Niwas sons of Dalel Singh were went there for irrigating the field and at about 10:00 P.M in the night yesterday we were irrigating our fields at that time Ramesh, Dharampal, Ram Phal sons of Balbir and Sampat, V. P. sons of Ram Phal caste Jatt, Resident of Kuleri and nephew of Dharampal Vijender son of Hariya Caste Jatt R/o Kamri and Munni D/o Balwant, Rajesh S/o Ram Sawroop, Krishana wife of Ram Sawroop Caste Jat R/o Dhani Binja Lamba came together and they were carrying lathis and dandas in their hands, Sampat was having pistol in his hand. They all came and said that we will teach you a lesson regarding the irrigating the fields and they all started beating to us and they have given uncounted injuries on our head, foot and hands and we raised alarm mar diya

mar diya then Raja son of Dholia R/o Mainda and Chander Bhan son of Dalel Singh caste Jatt resident Garhi have rescued us from their clutches otherwise they would have given more beating to us and after that they went alongwith their respective weapons. And while going they have said that today you have spared and in future if we will get a chance then we will kill you. The grudge is regarding the water and Dharampal and others have injured us without any reason and after that Raja admitted us in G.H. Hansi where we are getting treatment. Legal action may kindly be taken. Statement has been written, heard which is correct”

Sd/- Rajender, Attested ASI Radhy Shyam”.

3. Learned counsel for the petitioner contends that the respondents No. 2 to 5 were named in the FIR and specific roles have been assigned to them. Even, the police had recorded the statements of the injured witness Raj Karan Singh and even he had named the private respondents. During the course of trial, the petitioner/complainant appeared as PW1 and his testimony (Annexure P-1) was recorded by the trial Court, whereby, the injuries were specifically attributed to the private respondents. Learned counsel further submitted that the trial Court did not took into account the

deposition of eye witnesses and the injured witnesses and wrongly dismissed the application filed by the prosecution.

4. On the other hand, learned counsel appearing on behalf of respondents No. 4 and 5 vehemently argued that both the respondents belong to different villages and have been roped in only because of the fact that they are closely related to the main accused, who are already facing the prosecution. Only due to their relationship with the other accused, they were named by the complainant, even though they were not specifically present at the place of the occurrence.

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner had filed the present petition before this Court with a prayer to summon the respondents No. 2 to 5 as additional accused to face the trial alongwith other accused, who are facing the prosecution. However, vide order dated 22.01.2018, as regards respondents No. 2 and 3, the petition was ordered to be dismissed. Consequently, now the present case is to be examined qua the summoning of respondents No. 4 and 5 as additional accused in the present case. The law is well settled that the Courts should refrain from exercising powers under Section 319 Cr.P.C. as the said powers are discretionary and extra ordinary in nature. In the present case, the police initially conducted the investigation and it was found that the

respondents No. 4 and 5 were not present at the place of occurrence and were declared to be innocent. The investigation was also conducted by the Deputy Superintendent of Police, Hansi as well and it was found that they had been involved due to their relationship with the main accused facing trial. Even, in the present case, the examination-in-chief of Rajender Singh complainant/petitioner was recorded and no other evidence was recorded at that stage. Simply on the basis of the testimony of the petitioner, the present application under Section 319 Cr.P.C. was filed by the prosecution. Except the self serving statement of the petitioner, there was no other evidence against the respondents No. 4 and 5. Apart from that, the said statement was tested by the Investigating Agency and after investigation and verification of the facts, the respondents No. 4 and 5, who are residents of different village, were not found present at the place of occurrence. Even otherwise, it is highly unbelievable that the respondents No. 4 and 5, who belong to a different village, would go to a different village at 10.00 p.m. in the night and would participate in an occurrence, which had taken place at the spur of moment. Apart from that, it is also apparent from the record that for causing the injuries to the injured, 7 persons are already facing the prosecution.

7. The Hon'ble Supreme Court of India has held in the matter of Juhru and others Vs. Karim and another (2023) 5

Supreme Court Cases 406 as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked”.

8. In view of the above discussion, the present revision is ordered to be dismissed.

11.12.2023
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(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No