

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

106.

CRR No.2243 of 2019 (O&M)

Date of Decision:15.11.2023

Sharif

... Petitioner

Versus

State of Haryana and others

... Respondents

2. **CRR No.193 of 2021**

Parvej

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kehsav Pratap Singh, Advocate
for the petitioner in CRR No.2243 of 2019 and
for respondents No.2 to 11 in CRR No.193 of 2021.

Mr. Krishan Sharma, Advocate
for the petitioner in CRR No.193 of 2021 and
for respondents No.2, 3, 5, 6 and 9 to 11 in CRR No.2243 of 2019.

Mr. Gurmeet Singh, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. By this common order, two revision petitions, details of which have been given in the head note, are being disposed of as the orders under challenge in both the revision petitions are passed by the learned trial Court in a version and cross-version case. However, for the sake of brevity, facts are being enumerated from CRR No.2243 of 2019.

2. The petitioner by way of instant petition (CRR No.2243 of 2019) has approached this Court praying for setting aside the order dated 05.07.2019 passed by the learned Additional Sessions Judge, Palwal vide which the application filed by the petitioner herein under Section 319 Cr.P.C. for summoning respondents No.2 to 14 as additional accused was dismissed.

However, on request of counsel for the petitioner confining his prayer to

respondents No.2 to 6, 9 to 11 and 13, notice of motion was issued qua said respondents only.

3. In CRR No.193 of 2021, petitioner-Parvej has challenged the order dated 05.07.2019 passed by the learned Additional Sessions Judge, Palwal vide which application filed under Section 319 Cr.P.C. for summoning respondents No.2 to 11 as additional accused was dismissed.

4. In brief, the facts are that FIR No.239 dated 16.11.2015 under Sections 148, 149, 285, 323, 452, 506 IPC and Section 25 of the Arms Act was registered at Police Station Bahin, District Palwal on the complaint of Sharif son of Yasan, resident of village Tonka, Tehsil Hathin, District Palwal against Israel son of Juhru, Ajij son of Israel, Juber son of Israel, Shokin son of Noor S., Sarwar son of Tahir, Hanif son of Yasin, Umar son of Munira, Suhail son of Tahir, Arjuddin son of Mehmuda, Mufid son of Israel, Parvej son of Israel, Jahid son of Mehmuda, Tayyab son of Hassan Khan, Jakariya son of Juhru, Samand son of Juhru, Jafruddin son of Batula, Abid son of Deenu, Mehmuda son of Munira, Amin son of Deenu, Hamja son of Sherkhan, Fajjar son of Deenu, Jasru son of Samsuddin, Usman son of Idrish and Akbar son of Fatti, all residents of Village Tonka, Tehsil Hathin, District Palwal alleging therein that on 11.11.2015 at about 5.45 PM, Israel and his family members indulged in a fight with Rasid son of Subhan Khan and his wife Sayra over some election related issue and a complaint was given to the police in this regard. On next day i.e. 12.11.2015 at about 7-8 AM, Haji Rasid son of Subhan Khan, Wasim son of Haji Rasid, Javed son of Rasid and cousin brother of complainant namely E. Asruddin son of Isaq were going to see indisposed wife of Sahib son of Subhan Khan to his house and the complainant was walking behind them at some distance. In the meantime, all the accused person in connivance with each other attacked the complainant,

Assruddin son of Isaq, Haji Rasid, Wasim and Javed. Amongst the accused persons, Sarwar son of Tahir attacked Haji Rasid with iron rod and hit him at right feet and Umar son of Munira, who was armed with a stick hit him at his head. Hanif son of Yasin hit at the left hand with stick and Suhail son of Tahir gave a stick blow on his right feet. Asruddin son of Isaq was hit by Ajij son of Israel with iron rod at his right side, Jubair son of Israel gave a iron blow on his head towards left side, Shokin son of Mohammad hit on the backside of his head and Israel son of Juhru gave a stick blow at his face and due to which teeth of Asruddin were broken and again stick was hit at his back and in the middle of both his eyes. Wasim was hit by Jasruddin son of Samsudan with iron rod on his head and Amin son of Deenu hit at his left shoulder with stick whereas Fajjar son of Deenu hit on his right feet below the knee. Javed son of Rasid was hit by Mufid son of Israel with *farsa* (sharp edged) at the head and Javed was hit by Jakariya son of Juhru at his shoulder with stick. After hearing the hue and cries of the complainant-Sharif, Nasru son of Hamida, Chandrabhan son of Hamida, Mubarik son of Maksud and Noor S. son of Feroj Khan, residents of Tonka came running to his rescue. However, other accused persons also came running and amongst them, accused Mehmuda son of Munira hit at the right side of head of Mubarik son of Maksud with rod and Tayyab son of Hasan Khan gave a stick blow on his face, due to which his lips got cut and teeth were broken. The other accused namely Nasru, Chandrabhan, Noor Mohammad gave beatings to Jakir. They entered the house of Nasru and damaged his motor cycles. They also tried to damage the house of Nasru with his car bearing No.HR-74-0909 and Parvej son of Israel attempted to run over the complainant party with vehicle No.HR-73-7607 with an intention to kill them. On the basis of the registration of FIR, investigation was carried out wherein respondents No.2 to 14 were put in column

No.2. The trial commenced and during the course of proceedings, application under Section 319 Cr.P.C. was filed to summon respondents No.2 to 14 as additional accused, which was dismissed vide impugned order dated 05.07.2019 passed by the trial Court.

5. Learned counsel for the petitioner in CRR No.2243 of 2019 *inter alia* contends that there are total eight injured, who received 20 injuries. Total 25 persons named in the FIR, out of which 12 were declared innocent and 13 are facing trial. It is contended that no material was placed on record to indicate as to how 12 accused persons were declared innocent. It is further contended that the version of the complainant in the FIR was duly corroborated by the MLR. In the MLR, injury No.4 at the right head of injured Asrudin was attributed to Abdul Aziz, Shokin and Juber, injury No.1 on the head of Mubarik was attributed to Mahmooda whereas injury No.1 on right feet of Haji Rasid was attributed to Sarwar and Amir Sohail. Injury No.2 on the face of Mubarik was attributed to Tayab Hussain and therefore, the impugned order dated 05.07.2019 is liable to be set aside and respondents No.2 to 6, 9 to 11 and 13 are liable to be summoned as additional accused.

6. Per contra, Mr. Krishan Sharma, learned counsel appearing for respondents No.2, 3, 5, 6 and 9 to 11 supports the impugned order dated 05.07.2019 passed by the learned trial Court by contending that it was an fight between two parties over some election dispute wherein about 50 persons were involved and therefore, the complainant in the present case tried to implicate as many as persons. The investigating agency after thorough investigation put the aforesaid respondents in column No.2 and therefore, merely on the statement of complainant, without any cogent material, the trial Court has rightly dismissed the application under Section 319 Cr.P.C. to summon the aforesaid respondents

as additional accused. It is further contended that in fact, the complainant in FIR No.239 of 2015 was aggressor party, who inflicted injuries upon the complainant and others in cross-version and therefore, respondents No.2 to 11 in CRR No.193 of 2021 are liable to be summoned as additional accused, as complainant PW1 Parvej and PW2 Nasir Hussain duly corroborated the contents of his complaint Ex.PW1/A, which formed the basis of registration of cross FIR No.238 dated 16.11.2015 registered under Sections 148, 149, 323, 427, 506 IPC.

7. In rebuttal, learned counsel appearing for respondents No.2 to 11 in CRR No.193 of 2021 submits that the petitioner herein first lodged the FIR and the FIR lodged by the respondents is nothing but a counter blast to the said FIR. The petitioner herein was not the aggressor rather he is a victim, who received grievous injuries in the incident.

8. Having heard learned counsel for the petitioner and after perusing the record of the case, this Court finds no ground to interfere with the order dated 05.07.2019 passed by the learned trial Court. Admittedly, it is a case of fight occurred between two groups over an election dispute and therefore, version and cross version were lodged by both the parties against each other. Both the parties made an endeavour to implicate as many as persons of other side. After a thorough investigation, accused persons sought to be summoned as additional accused under Section 319 Cr.P.C. were put in column No.2. There is no fresh material brought on record to substantiate the complicity of the accused persons so that they ought to have been challaned by the police along with accused already facing trial. The FIR is not an encyclopedia and mere statement of the complainant reiterating the contents of FIR/complaint not substantiated by any credible material, cannot be a ground to invoke the discretionary and

extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C.

9. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** has held that the power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

10. The trial Court must evaluate the material 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 material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another (2023) 5 SCC 406*** speaking through Justice Surya Kant, while relying upon ***Hardeep Singh's case*** (supra) has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than 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.

11. In view of the aforesaid facts and circumstances, this Court does not find any ground to interfere with the impugned orders dated 05.07.2019 passed by the learned trial Court. Consequently, both the petitions stand dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 15, 2023
Pankaj*

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