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

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**CRR-3078-2018 (O&M)
Date of decision : 13.07.2023**

Parvesh

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.S. Lamba, Advocate
for the petitioners.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

Mr. Saleem Malik, Advocate
for respondent No.2.

Mr. Sandeep Beniwal, Advocate
for respondent No.3.

Ms. Amrita Garg, Advocate
for injured eye witness.

PANKAJ JAIN, J. (Oral)

Present revision petition has been preferred impugning order dated 20.04.2018 passed by Additional Sessions Judge, Hisar whereby the petitioner has been summoned as an additional accused to face trial in FIR No.190 dated 16.06.2017, registered for offences punishable under Sections 148, 149, 323, 324, 325 and 506 of IPC and Section 3 V of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sadar Hansi resorting to Section 319 Cr.P.C.

2. As per the allegations levelled in the FIR, it was alleged as under:-

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“xx xx xx

Statement of Rahul age 20 years S/o Polu Ram caste Chamar resident of Bhatla mobile No.99962-57091. It is stated that I am resident of village Bhatla and by profession I am agriculturist. Yesterday on date 15.06.17 time about 5.30/6.00 in the evening I, along with Vikas S/o Suresh, Narsingh S/o Harke Ram, Kuldeep S/o Dharamvir caste Chamar residents of Bhatla have gone to fill the water from hand pump situated near power house of our village and there Anoop S/o Ramphal caste Brahmin R/o Bhatala also came there to fill water, and said I shall take the water and we said that first number is ours because we have come here first. At this Anoop started casteist remarks and abusing about mother and sister. Then Anoop called over phone his companions and Mahender S/o Jai Kishan, Pravesh R/o Ravi, Sikandar S/o Rameshwar, Banka S/o Chander, Sunil S/o Banka, Mohan S/o Kuldeep, caste Brahmin and Pravesh S/o Dallad caste Jat residents of Bhatla reached on the spot and Jemal S/o Amarchand and Amit S/o Mahavir caste Chamar residents of Bhatla also arrived on the spot. That Anoop, Sikandar, Pravesh, Mahender and Banka were holding iron rods and Sunil was holding Danda' and Pravesh was holding knife. That Pravesh gave a blow on my left arm with knife and Sunil gave a blow in my back with 'Binda ki Khod', Mohan gave a blow with brick on right hip of Jemal. Mahender caught Vikas and Mohan gave a blow with brick on right side of face of Vikas, then Sikandar gave a blow on the left side of head of Amit with iron rod which he was holding in his hand, then Anoop gave a blow at left hip of Nar Singh and on his left hand claw with iron rod

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which he was holding, then Pravesh S/o Dallad gave a blow with the knife at the right hand wrist of Kuldeep which he was holding in his hand. Then many persons from village gathered on the spot and they saved us from persons who were giving us injuries. Then these persons who were giving us injuries ran away from the spot along with their arms and while leaving from there they threatened us that today you were saved but in future if you will meet us then we shall kill you. Then our relative Kuldeep S/o Mehtab caste Chamar R/o Faridpur arranged the vehicle and brought me, Jemal, Vikas, Amit, Nar Singh and Kuldeep in the injured condition at GH Hisar. Here Doctor sahib gave us first aid and got admitted me and Jemal for treatment. Remaining Vikas, Amit, Nar Singh and Kuldeep were relieved after first aid. That legal action be taken against above mentioned Anoop, Mahender, Pravesh, Sikandar, Banka, Sunil, Mohan and Pravesh S/o Dallad.”

3. The matter was investigated and the investigating agency did not challan the petitioner observing as under:-

“In the present case named accused Pravesh S/o Dallad cast Jat resident of Bhatla was found innocent. At the time of incident he was found to be at Hyderabad. No investigation is pending in the present case. Therefore challan is being submitted against above mentioned accused persons Mahender @ Amit, Sunil, Subhash and Ravindeer @ Sikandar. The challan against above mentioned persons along with list of reliable witnesses is being submitted in the Hon’ble Court.”

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4. During the course of trial, PW-1 Vikas appeared and reiterated the case of prosecution specifically naming the petitioner. Application under Section 319 Cr.P.C. was moved which has led to the impugned order allowing the application observing as under:-

“xx xx xx

9. In view of above deposition of injured PW Vikas(PW1) specific role played by accused facing trial and Parvesh son of Dallar, who is not challaned by the police, has been mentioned. Even alongwith final report submitted by the prosecution under section 173 Cr. PC whereby accused who are facing trial have been challaned, statements of complainant Rahul on the basis of which present case was registered and statement of injured Kuldeep recorded under section 161 Cr. P.C. has been attached and perusal of same shows that both these injured/witnesses have clearly stated before police about the involvement of Parvesh son of Dalar in the crime but surprisingly, he was not challaned by the police. Moreover, the aforesaid version of prosecution is duly corroborated by MLR of complainant Rahul and injured Kuldeep, perusal of same shows that both the injured suffered clear incised wound on their arm which has been caused with sharp weapon. Nonetheless, it is to be seen whether there is more than prima facie case to summon Parvesh son of Dallar and others whose names have been mentioned in the application, in the present case as additional accused to face trial or not. It is also to be seen whether the evidence brought on record by the prosecution, as discussed above, if not rebutted may lead to conviction of Parvesh son of Dallar and others sought to be added

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as accused or not. In the considered opinion of this court, as discussed above, prosecution has brought on record sufficient evidence against Parvesh son of Dallar in the shape of statement of injured Vikas(PWI) that if same remains unrebutted, is sufficient to base the conviction of aforesaid person, therefore, the degree of satisfaction for invoking section 119 Cr PC in the present case is complete.

10. As regard the role of other persons sought to be summoned as additional accused i.e. Jai Kishan, Ram Niwas and Rinku is concerned, in the considered opinion of this court, there is no sufficient evidence or material on the record to invoke the provisions of section 319 of Cr. p.C. against them.”

5. Counsel for the petitioner submits that the investigating agency in its report filed under Section 173 Cr.P.C. specifically concluded that at the time of occurrence, the petitioner was at Hyderabad and thus without dealing with the aforesaid observation, the impugned order ought not have been passed. Reliance is being placed upon order passed by Apex Court in ***Brijendra Singh and others vs. State of Rajasthan (2017) 4 Supreme Court Cases (Cri) 144.***

6. Per contra, counsel for the respondents have argued that the case of the prosecution is consistent since its inspection and specific role has been attributed to the petitioner of having caused injury on the right hand wrist of Kuldeep and the same stood corroborated by scientific evidence in form of MLR pertaining to the injuries suffered by Kuldeep, wherein incised wound 6.5x.5 cm though the same is stated on the left hand. It is further contended by the counsel representing the

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respondents that apart from that so far as the story of mobile phone of the petitioner being at Hyderabad is concerned, the said sim card is in the name of mother of the petitioner. It has been further stated that PW-1 Vikas is one of the injured witnesses and thus his statement cannot be taken lightly.

7. In view of the aforesaid overwhelming evidence, trial Court has rightly summoned the petitioner.

8. I have heard counsel for the parties and have gone through the records of the case.

9. Law w.r.t. summoning of witness is no more *res integra* and has been laid to rest by Constitution Bench in the case of ***Hardeep Singh vs. State of Punjab, reported as (2014) 3 SCC 92***. The test prescribed is that the evidence should be more than prima facie i.e. the evidence should be of the nature that if it withstands the trial, the same can lead to the conviction.

10. Para 95 of ***Hardeep Singh's (supra)*** reads as under:-

“95. In ***Suresh v. State of Maharashtra, 2001(2) RCR (Criminal) 278***, this Court after taking note of the earlier judgments in ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, 1991(1) RCR (Criminal) 89*** and ***State of Maharashtra v. Priya Sharan Maharaj, 1997(2) RCR (Criminal) 634***, held as under :

"9.....at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

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The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction." (Emphasis supplied)"

11. The reliance being placed upon ***Brijendra Singh's case*** (*supra*) is totally misconceived. Para 15 of the same reads as under:-

"This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much

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stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

12. Thus, in *Brijendra Singh’s case (supra)*, there was nothing but for the oral statements made by witnesses before the trial Court to dislodge report under Section 173 Cr.P.C. whereas in the present case, there is evidence not only in the form of testimony of the injured witness, but also scientific evidence which if proved will be sufficient to drive home guilt of the petitioner leading to his conviction.

13. In view of above, the present matter is dismissed being without merit.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.07.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No