

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

CRR-3381-2019

Reserved on 24.02.2023

Pronounced on: 28.02.2023

Om Prakash

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Jai Vir Yadav, Sr. Advocate with
Ms. Sunita Shekhawat, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

The petitioner/complainant is assailing the order dated 31.10.2019 passed by learned Additional Sessions Judge, Narnaul whereby the order dated 16.03.2019 passed by learned Judicial Magistrate 1st Class, Kanina for summoning accused/respondent No.2 under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to face trial as an additional accused was set aside.

As per the allegations levelled in the First Information Report (for short, 'FIR'), on 13.04.2017 at about 09:00 A.M., when the petitioner/complainant was working in his fields, all the accused including respondent No.2 Parveen Kumar suddenly descended on the spot armed with *lathis* and *dandas* and attacked him. Respondent No.2 allegedly inflicted a *lathi* blow on the fingers of the left hand of the petitioner while co-accused Nirmal Kumar @ Kalia inflicted a *lathi*

blow on his back. Co-accused Krishna Devi also inflicted injuries upon the person of the petitioner. On a hue and cry raised, the accused fled away but not before extending threats of dire consequences to him. The petitioner was medico legally examined on the same day in the Government Hospital.

The investigating agency during investigation found respondent No.2 Parveen Kumar innocent and placed him in column No.2.

During trial, pursuant to the deposition of the complainant, application under Section 319 of the Cr.P.C. was filed by the complainant for summoning respondent No.2 Parveen Kumar on the ground that he had been specifically named and attributed a role in the offence in question, however, still the police had found him innocent and not challaned him.

Learned Senior Counsel appearing for the petitioner while drawing the attention of this Court to the allegations levelled in the FIR as well as in the deposition of the petitioner as PW1 before the Trial Court, has argued that the police without assigning any reason had simply put the name of respondent No.2 Parveen Kumar in column No.2, even though he had been attributed active participation in the crime along with the co-accused, and still further, the petitioner had categorically spelt out his role in detail. Hence, application under Section 319 of the Cr.P.C. had been moved before the Trial Court, which was rightly allowed by it, in the light of the evidence and other material placed before it. However, the learned Revisional Court gravely erred in setting aside the well reasoned order of the leaned Trial

Court by observing that “....*the statement of the complainant Om Parkash was recorded on 16.04.2017 at 1815 hours despite the fact that occurrence had happened on 13.04.2017 at 0900 hours fortifies that possibility of alleged involvement of petitioner after thought cannot be ruled out....*”. Learned Senior Counsel vehemently contended that if the police had prima facie found the involvement of co-accused Nirmal Kumar @ Kalia and Krishna Devi in the occurrence in question, despite a delay in the lodging of the FIR, it failed to appeal to reason as to how the involvement of respondent No.2 Parveen Kumar could be an afterthought when not only had he been named along with the co-accused in the FIR but also attributed a specific role therein. It was further urged that the learned Revisional Court erred in observing that the medical evidence did not corroborate the ocular testimony as there was absence of any visible injuries on the finger of the left hand of the complainant, even though the MLR of the petitioner reflected injuries on his left hand.

Per contra, Learned Counsel appearing for respondent No.2 while opposing the prayer and submissions made by the counsel opposite, asserted that in fact it was the learned Trial Court which had erred in allowing the application under Section 319 of the Cr.P.C. and the learned Revisional Court had thus corrected the said wrong by allowing the revision preferred by respondent No.2 to impugn the said order. Learned counsel submitted that in the alleged occurrence only simple injuries had been received by the complainant and it could not be digested that had it been a case wherein the complainant had been attacked by as many as 03 persons, he would have escaped with only

simple injuries. Hence, the police had rightly found respondent No.2 Parveen Kumar innocent and placed him in column No.2. It was still further argued that the learned Revisional Court had rightly observed that though the name of respondent No.2 Parveen Kumar did find mention in the FIR and the petitioner may have even reiterated the allegations levelled against him in the FIR, however, once the police had not found him present at the place of occurrence, he had been rightly declared innocent and placed in column No.2.

I have heard Learned Counsel for the parties and perused the relevant material on record including the report under Section 173 of the Cr.P.C. which has been annexed as Annexure P-1.

A bare reading of the FIR coupled with the deposition of the complainant which has been annexed as Annexure P-4 reveals that there is hardly any inconsistency therein with respect to the allegations levelled qua the participation of respondent No.2 Parveen Kumar along with the co-accused in the commission of the alleged crime. The observations of the Revisional Court while passing the impugned order that the possibility of respondent No.2 Parveen Kumar being roped in, as an afterthought, on account of the delayed FIR, is totally erroneous inasmuch as the case of respondent No.2 Parveen Kumar is not at all distinguishable from that of his co-accused. If delayed FIR could not come in the way in challaning the co-accused, this Court fails to comprehend as to how the factum of the alleged delayed FIR could be taken to be a ground much less an afterthought qua the false implication of respondent No.2 Parveen Kumar in the crime.

This Court also finds it extremely strange that the learned

Revisional Court formed an opinion that there was some discrepancy between ocular and medical evidence qua the injuries received by the complainant on his fingers. No doubt, in the FIR. The petitioner alleged that injuries had been inflicted on his fingers by respondent No.2 whereas during trial as per his testimony in the Court as PW1, he deposed that the injuries were not received on his fingers but next to the thumb of his left hand, however, this alleged discrepancy at the stage of deciding an application under Section 319 of the Cr.P.C. could not be a ground to doubt the truthfulness of his version more so when the doctor who medico legally examined him was yet to step into the witness box. The fact of the matter is that as per the MLR admittedly there were a few injuries which were found on his hand. Even if as contended and urged by Learned Counsel for respondent No.2 that the said injuries were simple in nature, it needs to be emphasized that the gravity of an offence or even the nature of injuries cannot be a ground to allow or reject an application under Section 319 of the Cr.P.C. The object behind Section 319 of the Cr.P.C. is to ensure that no one who appears guilty escapes trial in relation to that guilt.

Furthermore, it is yet again a very strange approach of learned Revisional Court that since the police had found respondent No.2 Parveen Kumar innocent, it established that he was falsely framed in the case in hand. Merely because the investigating agency had found respondent No.2 innocent would not be a ground to not summon him under Section 319 of the Cr.P.C., as it would defeat the very purpose behind its enactment. As already observed earlier, enough evidence stands produced before the Court qua the prima facie involvement of

respondent No.2 in the crime in question and while deciding an application under Section 319 of the Cr.P.C., the Court is to simply restrict itself to the evidence produced before it.

Accordingly, the instant revision petition is allowed order dated 31.10.2019 passed by learned Additional Sessions Judge, Narnaul is hereby set aside. Respondent No.2 Parveen Kumar is ordered to be summoned as an additional accused to face trial.

However, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the case.

28.02.2023

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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