

2024:PHHC:112865



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

249

CRR 2346 of 2018 (O&M)
Date of Decision: 27.08.2024

Resham ...Petitioner
Versus
State of Haryana and others ... Respondents

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

Present : Mr. S.S. Majithia, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned order dated 03.07.2018 passed by the Court of Sessions Judge, Panipat, whereby, the application filed by the petitioner for summoning of respondents No. 2 to 4 under Section 319 Cr.P.C. was ordered to be dismissed.
2. As per the case set up by the prosecution, the FIR No. 173 dated 24.05.2017 under Sections 323, 325, 452, 307, 506 and 34 of IPC, Police Station Madlauda, was initially ordered to be registered against Deepak and Ajmer, co-accused on the basis of the application moved by Resham wife of Shamsheer, complainant. As per her, at about 12.00 a.m. in the midnight on 18.05.2017, she was sleeping inside her house and her husband was sleeping in the

courtyard of the house. Few months ago, Deepak, accused was talking on his mobile phone loudly on the roof of his house and was using abusive language. Her husband Shamsher objected to him by stating that it was a residential area and he should not talk so loudly. However, Deepak abused her husband and a complaint was moved by her husband. However, with the intervention of the brotherhood, the matter was resolved. Due to the said enmity and with an intention to kill her husband, on 18.05.2017, Deepak Kumar and Ajmer alongwith 2/3 persons attacked her husband with *dandas* and iron rods. When she made hue and cry, the accused ran away from the roof of the house. However, while leaving, the accused persons threatened her husband with dire consequences and the FIR was registered against the accused persons.

3. During the course of investigation, the statement of Shamsher, injured, was recorded under Section 161 Cr.P.C. on 10.06.2017, wherein, he alleged that on the night of occurrence, respondents No. 2 to 4 had also come with Deepak and Ajmer. All the accused had caused injuries to him with *lathies* and rods, while he was sleeping. After suffering injuries, he shouted and his wife came from his house and she raised alarm and all the accused fled towards the house of Deepak.

4. During the course of investigation, Deepak and Ajmer were challaned by the police and the respondents No. 2 to 4 were found innocent. Now, Deepak and Ajmer have already been convicted

and sentenced by the Court of Additional Sessions Judge, Panipat vide judgment of conviction dated 20.08.2021 and order of sentence dated 24.08.2021, respectively.

5. Learned counsel for the petitioner contends that apart from Ajmer and Deepak, respondents No. 2 to 4 had actively participated in the commission of the crime. After suffering the injuries, Shamsher was seriously injured and the MLR dated 19.05.2017 (Annexure P-2) was prepared. Thereafter, Shamsher was taken to Civil Hospital, Panipat and he was referred to P.G.I., Rohtak. Shamsher remained admitted in P.G.I.M.S., Rohtak, from 19.05.2017 to 02.06.2017, which is apparent from the discharge card dated 02.06.2017 (Annexure P-3).

6. During the course of investigation, the statement of Shamsher, injured, was recorded on 10.06.2017 and he had specifically named respondents No. 2 to 4. Learned counsel further submits that there was sufficient evidence to summon the respondents No. 2 to 4 under Section 319 Cr.P.C. as additional accused in the present case.

7. On the other hand, learned State counsel submits that during the course of investigation, the respondents No. 2 to 4 were found innocent and their involvement was not established in the occurrence.

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

9. In the present case, as per the copy of MLR (Annexure P-2), Shamsheer, had suffered only four injuries and he was conscious and oriented at the time of preparation of his MLR. Still further, Shamsheer and his wife Resham knew respondents No. 2 to 4 very well as they also belonged to the same village and were well known to the complainant party. However, from the FIR dated 24.05.2017, it is apparent that the respondents No. 2 to 4 were not named as the assailants in the present case. Resham, complainant/wife of injured knew respondents No. 2 to 4 very well being the residents of the same village and nothing prevented her from naming the respondents No. 2 to 4 as assailants in the present case. However, they were named as assailants by Shamsheer in his statement dated 10.06.2017, which was recorded after 26 days of the occurrence. Thus, the trial Court has rightly recorded that the statement of Shamsheer was recorded after due deliberation and consultation and respondents No. 2 to 4 were wrongly involved in the present case.

10. Still further, even during the course of trial, the prosecution has sought the summoning of respondents No. 2 to 4 only on the basis of the statement made by Shamsheer, PW1. From the MLR (Annexure P-2) of Shamsheer Singh, it is apparent that he had only suffered 04 injuries on his person. In the present case, Deepak and Ajmer were already facing the prosecution and the prosecution has moved the present application under Section 319 Cr.P.C. for summoning of three additional accused, i.e., respondents No. 2 to 4.

Even, five persons had inflicted injuries with dandas and iron rods in the manner as stated in the FIR, Shamsher Singh, injured would have definitely suffered many more injuries. However, the medical evidence in the present case does not support the story projected by PW1 Shamsher Singh and the Court has rightly declined the application under Section 319 Cr.P.C. to summon the proposed accused, i.e., respondents No. 2 to 4 to face the trial as additional accused in the present case. Even otherwise, I have carefully perused the detailed findings recorded by the trial Court and the impugned order is based on correct appreciation of evidence and settled canons of law and the application under Section 319 Cr.P.C. has been rightly declined by the trial Court.

11. Thus, finding no merits, the present petition is ordered to be dismissed.

27.08.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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