

Date of decision: 28.02.2024

....Petitioner

...Respondents

Mr. Vikas Chaudhary, Advocate
for respondent No.2.

2. Succinctly, the facts are that on 09.04.2017, the complainant-respondent no. 2 found door of his house broken with Bijender and the petitioner standing there, armed with *dandas*. Both the accused started abusing respondent no.2-complainant and when he raised objection, they attacked him. Bijender gave a *danda* blow on the waist of the complainant while the petitioner hit him in the stomach. They also dealt fist and leg blows to respondent no. 2 after throwing him on the ground. Thereafter, respondent no. 2 raised hue and cry causing one Shanti to arrive at the spot and rescue him.

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3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been summoned without satisfying the parameters as laid down by the Constitutional Bench in '**Hardeep Singh Vs. State of Punjab**' 2014 (1) **RCR (Criminal) 623** i.e. more than a *prima facie* case must be made out. He further contends that there is no fresh evidence to indicate the complicity of the petitioner in the alleged incident *qua* causing injuries on the person of the complainant by the petitioner. While appearing as PW-1 the complainant has merely reiterated his version contained in the FIR and there is no fresh evidence which warrants the summoning of the petitioner as an additional accused under Section 319 Cr.P.C. The Investigating Agency, after a detailed investigation, has concluded that the petitioner was not present at the spot. Learned counsel for the petitioner relies upon the affidavit of the eye witness-Shanti Devi wherein she has stated that she gave her statement under Section 161 Cr.P.C. under the influence of the family of the complainant and the petitioner was not involved in the alleged incident. He further relies upon the judgments of this Court passed in '**Sunil @ Sunil Kumar and others Vs. State of Haryana**' CRR No.552 of 2023 (O&M) pronounced on 20.01.2024, '**Rahul Vs. State of Haryana and another**' CRR No.4885 of 2017 (O&M) decided on 24.02.2022 and '**Harjap Singh Vs. State of Punjab another**' CRR No.3652 of 2016 (O&M) decided on 16.03.2020 and the judgments of the Hon'ble Supreme Court passed in '**Ramesh Chandra Srivastava Vs. State of U.P. and another**' Criminal Appeal No.990 of 2021 (arising out of SLP (Crl.) No.6381 of 2020) decided on 13.09.2021 and '**Sagar Vs. State of U.P. and another**' Criminal Appeal No.397 of 2022 (arising out of SLP (Crl.) Nos. 7373 of 2021) decided on 10.03.2022

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4. *Per contra*, learned counsel representing the complainant/respondent no. 2 submits that the affidavit given by Shanti Devi cannot be looked into as it would be against the mandate of the ratio of law as laid down in ***Hardeep Singh's case (supra)*** wherein the term 'evidence' as mentioned in Section 319 Cr.P.C. has been held to mean the evidence before the Court. He further contends that there is sufficient material, especially, medical evidence which clearly proves the ocular version and the injury which has been declared dangerous to life has been specifically attributed to the petitioner. It is further contended that six of the co-villagers who have seen the petitioner inflicting injuries to the complainant/respondent No.2 are available. Therefore, the evidence available on record, especially, the medical evidence satisfies the parameters of more than a *prima facie* case as the credibility and the evidentiary value of medical evidence is at a higher pedestal. The version put forth by Shanti Devi, who made u-turn under the influence of the petitioner, and her affidavit cannot be treated as an evidence within the meaning of Section 319 Cr.P.C. To support his contentions, he relies upon the judgments of this Court passed in '***Ravinder @ Binder and others Vs. State of Haryana***' 2016 (2) RCR (Crl.) 60 and '***Randhir Singh Vs. State of Haryana and others***' 2023 (1) Law Herald 864 and the judgments of the Hon'ble Supreme Court passed in '***Sandeep Kumar Vs. State of Haryana***' Criminal Appeal No.2195 of 2023 decided on 28.07.2023, '***Shyam Chand Vs. State of Haryana and others***' 2020 (3) RCR (Crl.) 133, '***Rajesh and others Vs. State of Haryana***' 2019 (3) RCR (Crl.) 133, '***Hardei Vs. State of U.P***' 2016 (2) RCR (Crl.) 608, '***Manjeet Singh Vs. State of Haryana and others***' 2021 (4) RCR (Crl.) 25 and '***Hardeep Singh Vs. State of Punjab***' (*supra*).

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5. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the injured-complainant has specifically named the petitioner in the FIR and injury no. 2 has been specifically attributed to him. Further, the medical opinion fully corroborates the ocular version given by the complainant-respondent no. 2.

6. A two Judge bench of the Hon'ble Supreme Court in **S. Mohammed Ispahani Vs. Yogendra Chandak and Others 2017(4)R.C.R. (Criminal) 650**, speaking through Justice A.K. Sikri, has made the following observations:

“ 35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

Reliance in this regard can also be placed on '**Sartaj Singh v. State of Haryana and another**' 2021 AIR SC 1513.

7. Therefore, even if the Investigating Agency has concluded that the petitioner was not present at the spot, the learned trial Court has committed no error in summoning the petitioner as an additional accused under Section 319 Cr.P.C., especially since the petitioner is the main accused named in the FIR and has been specifically attributed injury no. 2, which has been declared dangerous to life, further attracting offence under Section 307 of the IPC. The availability of medical evidence and its corroboration of the ocular version duly satisfies the parameters laid down in **Hardeep Singh's case (supra)** i.e.

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more than a *prima facie* case has been made out. As such, in the considered opinion of this Court, the learned trial Court has correctly relied upon cogent evidence in the shape of medical evidence and appreciated the same in true perspective of Section 319 Cr.P.C and summoned the petitioner as an additional accused. The overarching goal of the justice dispensation mechanism is to seek out the truth, which is not only a cornerstone of criminal jurisprudence but also acts as a guiding light in the pursuit of justice.

8. In view of the above, this Court does not find any illegality in the impugned order dated 03.11.2017 passed by the learned Additional Sessions Judge, Narnaul, which would warrant any interference by this Court, thus, the present petition is hereby dismissed.

9. However, nothing observed herein shall be construed as expression of opinion by this Court *qua* the merits of the case, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

28.02.2024
Neha

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