



CRR-1800-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

CRR-1800-2019 (O&M)
Date of Decision : 17.09.2024

Kapil

...Petitioner

Versus

Vinay and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Pardeep Chhoker, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate and
Mr. Rohit Rana, Advocate
for respondents No.1 and 5.

Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate
for respondents No.2 to 4, 6 and 7.

Mr. Pawan Kumar Hooda, Advocate
for respondents No.8 and 9.

KULDEEP TIWARI, J.(Oral)

1. Through the instant appeal, challenge is thrown to the impugned order dated 02.04.2019, passed by the learned Additional Sessions Judge, Panipat, whereby, injured-Kapil has filed an application under Section 319 Cr.P.C., for summoning of accused persons namely, Vinay son of Ashok, Vipul son of Naresh, Adesh son of Baru Pinda, Suresh son of Rakha Deba, Vivek son of Gajender, Gourav Pinda son of Naresh and Amit son of Dharampal Dev, Neeraj son of Sama Tyagi and Gourav son of Jai Bhagwan, all residents of village Hathwala, Tehsil and Police Station Samalkha, District



learned Additional Sessions Judge, Panipat, which caused the grievance to the present petitioner and propelled him to file the instant statutory revision petition under Section 401 of Cr.P.C.

2. Learned counsel for the petitioner, on asking for the relief (supra), submits that there is sufficient evidence, for the purpose of summoning under Section 319 Cr.P.C., which establish the role of the private respondents, who are sought to be summoned, as an additional accused, as all the evidence, has not been appropriately considered in its right perspective by the Court concerned, while passing the impugned order (supra), therefore, it requires interference by virtue of exercising revisional jurisdictional powers by this Court.

3. Learned counsel for the petitioner has drawn the attention of this Court towards the statement of PW-1, i.e. the statement suffered by the petitioner, by stepping into the witness box, and submitted that there are specific, and clear-cut attribution to each and every accused, who are sought to be summoned under Section 319 Cr.P.C.

4. This Court, before embarking upon the submissions, and to make an observation regarding the legality of the impugned order (supra), put a specific query to learned counsel for the petitioner, as to whether, any other evidence has been produced before filing the instant application, to which, he answered in negative.

5. In the instant case, the prosecution agency was set into motion, on the statement made by one Kamal, son of Pawan, who is the brother of the present petitioner, the injured. The relevant extract of the FIR reads as under :-

“To the SHO, P.S. Samalkha, District Panipat. Sir, it is requested that I Kamal son of Pawan caste Pandit is a



permanent resident of Hathwala, Tehsil Samalkha, District Panipat. On 02.05.18 in the night at about 08.00 PM my brother went to Lucky son of Guddu at his house for some work. When my brother Kapil was returning from there, then Gaurav son of 2 3 Mukesh, Mukesh son of Rakha Deva, Sunny and Sagar both sons of 7 Suresh, Suresh son of Rakha Deva, Gaurav Tidda son of Pappu, Vipul 8 son of Naresh, Gaurav son of Naresh Pinda, Ashu son of Birender Kaba, Vijay @ Mintu son of Ashok, Vivek @ Golu son of Gajender, Adesh son of Baru Pinda all caste Tyagi residents of Hathwala and other 2-3 persons were attacked upon my brother Kapil with knife, Gandasi, Rod, Lathi, Dandas with an intention to kill him. Thereafter, they gave injures to my brother with their respective weapons and took my brother to the house of above said accused Mukesh son of Rakha Deva. Thereafter, I and my aunt (chichi) Dulari wife of Palu went to the house of Mukesh to escape Kapil, then out of the above said accused Sunny, Gaurav, Vipul and Gaurav Tidda by giving threat to kill me attacked and gave injuries with Rod and Dandas. Copy of MLR is enclosed with the application and Sagar son of Suresh gave Rod blow to my aunt (Chachi) Dulari on her head, upon which head of my aunt (chachi) was burst. Thereafter the peoples got escaped us, then someone called by phone on the spot. The above said accused persons to save themselves kept imprisoned my brother Kapil in their house by attacking with deadly weapons, they put pistol with him so that they can lodge false case. Therefore, my brother Kapil is admitted in Ayushman Hospital where his MLR was prepared and he has danger of his life. By keeping in view the injuries, legal action may kindly be taken against the accused persons. The above said accused attacked my brother with an intention to kill him in connivance with each other.”



6. The perusal of the above would reflect that though, the name of the accused persons, sought to be summoned under Section 319 Cr.P.C., has been mentioned in the FIR (supra), but no specific role has been attributed to them. Further, the statement of the injured-Kapil, was recorded under Section 161 Cr.P.C., about after a month, from the registration of the FIR (supra). The perusal of which would reflect, that he also did not attribute any specific injury to any of the accused persons, rather, there are allegations that the accused persons, has caused injuries to Kamal (complainant), and one Dulari, wife of Pallu. When the present petitioner, stepped into the witness box as PW-1, he impugned the earlier versions and levelled specific allegation against each and every accused persons, mentioned in the FIR (supra). The relevant extract is reads as under :-

“Mukesh s/o Rakha Deba had inflicted injuries on my right foot with spear, Sunny s/o Suresh had inflicted the injuries on my right foot with Gandasi, Suresh s/o Rakha Deba had inflicted the injuries on left foot, Sagar s/o Suresh had inflicted the injuries on my back of my neck by butt of country made pistol, Gaurav s/o Pappu Tida had inflicted the injuries on my right leg. Ashu s/o Virender Kaba had inflicted the injuries with Gandasi blow on my right hand and cut 1.y arm, Vipul s/o Naresh Gadha gave Gandasi blow on left side of my back, Aadesh s/o Baru Pinda had inflicted the injuries on my left arm with iron rod, Vinay s/o Ashok had inflicted the injuries on my left foot by Lathi, Vivek s/o Gajender Tyagi had inflicted the injuries on my right hand with Lathi and Gaurav s/o Jai Bhagwan, Neeraj s/o Shama Tyagi und Amit s/o Dharampal Deba had also inflicted injuries to me. After causing injuries to me they dragged me in the house of Mukesh s/o Rakha Deba and placed a country made pistol by the side of my arm. Gaurav s/o Mukesh put his leg on my chest and



administered me alcohol forcibly. After hearing the noise of both the parties my family members namely Kamai s/o Pawan Sharina, Dulari wife of Pallu also came there. They were also assaulted by the assailants. The assailants party had blamed me that I had come to their house for molesting their grand mother. Again said Gaurav s/o Mukesh gave Gandasi blow on ury head.”

7. Before the petitioner could be subject to cross-examination, an application under Section 319 Cr.P.C., was moved for summoning of additional accused, which was dismissed by the learned trial Court concerned.

OBSERVATIONS

8. This Court has examined the rival submissions made by learned counsel for the parties concerned, as well as the impugned order (supra). The only evidence, which sought to be relied upon by the learned counsel for the petitioner, is the statement of PW-1, which *prima facie* is result of improvement. Other than the improved versions, there is nothing on record, as on date, to substantiate the allegations, requiring the private respondents to face trial along with the other co-accused. Learned counsel for the petitioner, during the course of the arguments, has also placed reliance upon the disclosure statement of the co-accused, to submit that he categorically discloses about the involvement of the other co-accused. However, that piece of material, cannot be taken into consideration, at this stage, which is yet to be proved by the prosecution.

9. Keeping in view the above facts and circumstances, and the legal proposition, this Court does not find any perversity or illegality in the impugned order (supra), as the impugned order has been passed, specifically, in view of the law laid down by Hon’ble the Supreme Court in

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‘Hardeep Singh vs. State of Punjab and others’ AIR 2014 Supreme Court 1400.

10. Accordingly, the instant petition is, therefore, **dismissed**.

(KULDEEP TIWARI)
JUDGE

September 17, 2024
Manpreet

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