



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

CRM-M-45578-2024

Date of Decision: 15.10.2024

Ashish @ Mogli

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Ashish Rana, Advocate for the petitioner.

Mr. Karan Sharma, DAG, Haryana.

GURBIR SINGH, J. (ORAL)

1. Instant petition has been filed under Section 528 of BNSS, 2023 seeking quashing of the impugned order dated 14.08.2024 (Annexure P-2) passed by the Ld. Additional Sessions Judge, Panipat in criminal revision No.148 of 2023 and order dated 03.04.2023 (Annexure P-3) passed by the Ld. JMIC, Panipat in case FIR No.241 dated 11.11.2022 under Sections 323/324/326/506 read with Section 34 and 201 of IPC (Annexure P-1) registered at Police Station Sadar Panipat, District Panipat, whereby an application moved by the prosecution under Section 319 Cr.PC for summoning the petitioner as an accused to face the trial along with other accused, was allowed.

2. The brief facts which are necessary for disposal of this petition are that the FIR in question was registered against the petitioner and other three accused and the charge-sheet under Sections 323/324/326/506 read with Section 34 and 201 of IPC was filed against the other three accused persons on the ground that in furtherance of their common intention, they caused injuries to the complainant and his brother with blunt and sharp-edged weapons.

The complainant was examined as PW1. His examination-in-chief was recorded. He reiterated the allegations that three accused facing the trial along with the present petitioner had caused injuries. Thereafter, the complainant moved an application under Section 319 Cr.PC that the petitioner was wrongly not challaned by the police and for summoning him as additional accused to face trial along with the three accused already facing the trial.

3. The FIR in question was registered on the complaint of complainant-Deepak (PW1) that on 10.11.2022 at about 09:30 PM when complainant and his brother were standing at their house and the earlier accused were giving abuses to the villagers then his brother asked the accused persons why they were hurling abuses at the villagers, while standing in front of their house and upon this the accused started scuffling with them and the villagers separated them. The complainant and his brother were sent to their house and the accused were also sent to their house. The accused are already involved in criminal cases. At about 10:00 PM, his brother was going for duty as per his routine. His brother Dinesh was going in front of the house of the accused on motorcycle, accused who were already sitting in a pre-planned motive, caught hold of his brother. They brought down his brother from the motorcycle and gave him injuries with knife, rod, *lathi* and *danda* with the intention to kill him. On hearing the noise, the complainant came in support of his brother and found that his brother was lying unconscious with serious injuries on his head and stomach. When he tried to lift his brother then accused Kala and the present petitioner hit his head and hands with the sticks. Many villagers gathered and separated them otherwise the accused had intention to kill him and his brother. Accused threatened to kill, if any, complaint was registered against them and they took any medical treatment.

4. Learned counsel for the petitioner has argued that police during the investigation found the petitioner innocent. The investigation was conducted by the officer of the rank of DSP and the petitioner was not challaned. Only on the basis of the statement of complainant/PW1, petitioner has been summoned as additional accused. No such incident has taken place. The FIR was got registered in connivance of the police officials. On the other hand, the complainant and his family members had attacked the house of the family members of the petitioner and other alleged accused.

5. I have heard the learned counsel for the petitioner and also gone through the record.

6. In the original complaint there were specific allegations against the petitioner and three other accused. Challan was presented only against the other three accused and not against the petitioner. Specific act has also been attributed to the petitioner that he caused the injuries to the complainant and his brother Dinesh. The injuries are substantiated with the medical evidence. For summoning a person as additional accused, the evidence which is led in the Court on oath is required to be seen. In case ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623 (SC)*** relied upon by the learned Court of Additional Sessions Judge wherein it is held that at the time of considering summoning in exercise of powers under Section 319 CrPC test has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge. In case ***Rajendra Singh Vs. State of U.P. and another (2007) 7 Supreme Court Cases 378***, the Hon'ble Supreme Court held as under:-

“20. The power under Section 319 of the Code is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purposes of the

criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that the Code has specifically conferred a power on the court to proceed against others not arrayed as accused in the circumstances set out by this section. It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime.

21. *Exercise of power under Section 319 of the Code, in my view, is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319 of the Code. There is no reason to assume that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. There is no rationale in fettering that power and the discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises.”*

7. In the case in hand, the sufficient evidence has come on record in the Court for coming to the conclusion that allegations levelled against the petitioner, are not only *prima facie* but more than *prima facie*. The petitioner has been rightly summoned to face trial with other accused and the order is in accordance with the law. So, I do not find any infirmity in the order passed by the Ld. trial Court and there is no ground to interfere with the same. Accordingly, the present petition stands dismissed in limine.

8. However, nothing contained here-in-above shall be construed as an expression of opinion on the merits of the case.

15.10.2024
Parveen kumar

(GURBIR SINGH)
JUDGE

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