



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1977-2024
Date of decision: October 14th, 2024

Rahul
.....Petitioner

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

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Prateek Rathee, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner is impugning the order dated 30.08.2024 passed by learned Additional Sessions Judge, Hisar, whereby an application moved by the prosecution under Section 319 of the Cr.P.C. to summon Anil Bajad, Manoj Rawat alias Mauja, Vikas Goyal and Sunil Rawat as additional accused in FIR No.329 dated 27.04.2023 under Sections 147, 149, 307, 323, 506 of the IPC and Section 25 of the Arms Act registered at Police Station HTM, Hisar, has been dismissed.

2. Learned counsel for the petitioner argues that the learned trial Court erred in dismissing the application filed under Section 319 of the Cr.P.C. by the petitioner, vide which a prayer had been made to summon respondents No.2 to 5 (hereinafter referred to as 'the private respondents'), as additional accused to face trial in FIR No.329 dated 27.04.2023 under Sections 147, 149, 307, 323, 506 of the IPC and Section 25 of the Arms Act registered at Police Station HTM, Hisar. Learned counsel has argued that the brother of the petitioner lodged the FIR, providing a detailed account of the occurrence in question. Further,

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the private respondents were named alongside the other accused persons, and it was also alleged that due to a prior enmity, they had actively participated in the crime where the petitioner sustained two gunshot injuries-one on his foot and another on his abdomen.

3. Learned counsel for the petitioner has further contended that merely because the investigating agency found the private respondents innocent during investigation was neither a valid nor a sufficient reason to dismiss his application under Section 319 of the Cr.P.C., by the learner trial Court. Learned counsel asserted that although, no specific injury was attributed to the private respondents in the FIR, their presence at the spot, along with their role in instigating the other accused to attack the petitioner, was sufficient to establish their involvement in the crime in question.

4. Learned counsel while drawing the attention of this Court to the deposition of the petitioner, which has been annexed as Annexure P-4, has further submitted that during his testimony before the trial Court, the petitioner had unequivocally stated that the private respondents were present at the scene and played an active role in the crime by making verbal exhortations. These facts, according to the learned counsel for the petitioner, clearly indicate the complicity of the private respondents, making their summoning under Section 319 of the Cr.P.C., as additional accused, fully justified, as per the legal parameters laid down by Hon'ble the Supreme Court in *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92*.

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5. I have heard learned counsel for the petitioner and perused the relevant material on record.

6. Section 319 of the Cr.P.C. empowers Courts to summon persons not initially charge-sheeted as accused if compelling evidence emerges against them during trial. This discretionary power, however, must be exercised with caution. The standard for summoning an additional accused Section 319 of the Cr.P.C. falls between establishing a basic case and presenting evidence strong enough to warrant a conviction if left unchallenged.

7. The evidence required to invoke the provisions of Section 319 of the Cr.P.C. must be more substantial than that needed to establish a *prima facie* case but it need not reach the standard of proof beyond a reasonable doubt. This ensures that only credible and substantial evidence is used to summon an additional accused, preventing unwarranted legal action based on mere suspicion. In *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92*, Hon'ble the Supreme Court emphasized that trials should not be initiated based on weak or speculative evidence underscoring the need for strong *prima facie* evidence to prevent any misuse of the judicial process and to shield persons from unjust prosecution.

8. Adverting to the instant case, the FIR (Annexure P-1) was lodged at the instance of Bijender, who alleged that on the 26.04.2023, at about 10:15 PM, his brother Rahul went to Keshav Cream Dairy on his motorcycle. At the said place, accused namely Vijay, Sandeep, Gholu Bachhi, respondent No.2-Anil Bajad, respondent No.3-

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Manoj Rawat alias Mauja and respondent No.4-Vikas Goyal, along with 5-6 unidentified persons were already present. Upon Rahul's arrival, these persons started assaulting him. Sandeep fired a shot from his pistol at Rahul's leg. During this incident, respondent No.2-Anil Bajad instigated the other accused to kill Rahul, and respondent No.5-Sunil Rawat also raised a *lalkara* against him. Following this, accused-Vijay took out a pistol and fired at Rahul's stomach, causing him to fall to the ground. Accused-Vijay then fired another shot into the air and openly threatened to kill Rahul. Rahul then immediately called his brother, the complainant, informing him about the attack and asked him to come to the spot. Upon reaching the place of occurrence, the complainant took his injured brother, Rahul, first to Civil Hospital, Hisar and later to a private hospital for further treatment. The complainant while lodging the FIR alleged that the accused persons had fired at his brother with the intention of killing him.

9. During the investigation, the police recorded the statement of injured-Rahul. In his statement, Rahul mentioned that respondents No.2 and 5 had exhorted the other accused to kill him. He further stated that respondents No.3 and 4 Manoj Rawat alias Mauja and Vikas Goyal respectively, were armed with sticks at the time of the incident. As per the complainant, the altercation stemmed from a previous dispute between respondent No.5-Sunil Rawat and Rahul relating to the sale of liquor. However, the investigating agency during investigation, concluded that the private respondents were named primarily due to some past animosity between the parties.

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10. Notably, even based on the version given out by injured-Rahul, the only allegations against respondent No.2-Anil Bajad and respondent No.5-Sunil Rawat are that they exhorted the other accused to kill him, with no direct physical act or injury attributed to either of them. Furthermore, although respondent No.3-Manoj Rawat alias Mauja and respondent No.4-Vikas Goyal were alleged to be armed with sticks, no injuries were attributed to them much less with the sticks. Additionally, even as per the medical evidence, apart from two gunshot wounds on the person of injured-Rahul, no other injuries were found on the person of Rahul. In the absence of any cogent or corroborative evidence connecting the private respondents to the crime in question, and with the only allegations against respondent No.2-Anil Bajad and respondent No.5- Sunil Rawat being of verbal provocation, and no tangible actions or injuries attributed to respondent No.3-Manoj Rawat alias Mauja and respondent No.4-Vikas Goyal despite their alleged presence with sticks, the impugned order dismissing the application under Section 319 of the Cr.P.C. cannot be faulted. Based on the evidence available, the likelihood of the private respondents being convicted is exceedingly slim, and it is more probable that they would be acquitted if sent to trial, given the lack of any cogent or convincing evidence against them.

11. Accordingly, the instant petition stands dismissed.



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12. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

October 14th, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No