

2024:PHHC:146911



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CRR 2121 of 2024
Date of Decision: 28.10.2024

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

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

Present : Mr. Ravi Malik, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 08.08.2024 passed by the Court of Additional Sessions Judge, Palwal, whereby, the application under Section 319 Cr.P.C. filed by the petitioner was ordered to be dismissed.
2. The FIR in the present case was registered on the basis of the statement made by Khurshid son of Nawab and the same has been reproduced below:-

"To, SHO, PS Hathin. Subject: Legal action to be taken against 1. Mubarik S/o Hussain 2. Salau S/o Badan 3. Rasheed S/o Atru 4. Dilsad Sio Sarid 5. Saukat S/o Badan 6. Badan S/o Nawab, R/o village Guraksar, Tehsil

Hathin, District Palwal. Sir, It is requested that I, Khurshid S/o Nawab, am a resident of village Guraksar, Tehsil Hathin, District Palwal. I live in my village peacefully. The fact is that we already have a grudge against the accused. Sir, on 04.12.2021, all the accused were gathered in lieu of Rasheed's son, who was released from jail about 20 days ago. So I and Ali Ser Ser Khan, who is my real brother and my son Sahib Khan were also with us. We were coming from the house of our brother Hanif S/o Nawab at around 11:45 at night. When we reached in the chowk, all the accused were armed with weapons and sticks. Mubarik S/o Hussain had a country made pistol, Salau had a small gun and Raseed and Dilsad had country made pistol, Badan and Sokat had sticks in their hands and on seeing us, Sokat and Badan said that today we are all together and our enemies are leaving from here, so let's kill them today. At the same time, Salau son of Badan fired a bullet at us from country made pistol, which hit my son Saheb left leg thigh and Mubarik also fired a bullet, which hit on the fingers of Saheb left hand, Raseed and Dilsad also fired at him with the intention of killing him which did not hit him. Dilsad hit on the thigh from the reverse side of the country made pistol and fired at us as well. Due to which we narrowly escaped. When we shouted for help, the accused ran away seeing the crowd coming. After that we took Sahib to Government Hospital Hathin, from there he was referred to Nalhad Medical College. Sahib is undergoing treatment here. Therefore, it is requested to you that the accused, in collusion with each other, fired at us with the intention to kill and wanted to kill my

son and legal action should be taken by registering a case against them. Date 05.12.2021. SD/-....."

3. Learned counsel for the petitioner contends that the occurrence had taken place on 04.12.2021 and specific allegations were levelled against respondents No. 2 to 4. However, the police colluded with the accused in the present case and Salauddin was challaned by the police and two accused, namely, Dilsad and Mubarik had been declared proclaimed persons. However, Shaukat, Badan and Rashid, respondents No. 2 to 4 were declared innocent by the police during the course of investigation. During the course of trial, the statement of PW1 Khurshid and PW3 Mohd. Sahib were recorded by the trial Court. After the recording of the statements of PW1 Khurshid and PW3 Mohd. Sahib, the prosecution moved an application under Section 319 Cr.P.C. for summoning the respondents No. 2 to 4 to face trial alongwith other accused. However, vide the impugned order, the application was ordered to be dismissed illegally.

4. Learned counsel for the petitioner further contends that the respondents No. 2 to 4 were specifically named in the FIR and despite that they had been wrongly exonerated by the police and were not made accused in the present case. Apart from that, the prosecution examined petitioner as PW1 and his son Mohd. Sahib as PW3 and again they had reiterated the version as mentioned in the FIR. Learned counsel further contends that the trial Court had

completely overlooked the material on record, which warranted the summoning of the respondents No. 2 to 4 under Section 319 Cr.P.C.

5. I have heard the submissions made by the learned counsel for the petitioner at length and perused the case file properly.

6. In the present case, the complainant had initially levelled allegations against 06 accused, namely, Salauddin (facing trial), Mubarik, Dilshad (both declared proclaimed persons), Shaukat, Badan and Rashid (respondents No. 2 to 4) that they had attacked on him and his son Sahib. It was alleged that Mubarik, Salauddin, , Rashid and Dilshad had pistols in their hand whereas Badan and Shaukat were carrying lathies. Shaukat and Badan exhorted to kill the opposite party. Salauddin fired upon Sahib, who suffered injuries on his left thigh and Mubarik also fired on the finger of left hand of Sahib. It was further alleged that Rashid and Dilshad also fired on them with an intention to kill them but the shots did not hit them. Dilshad also fired on Sahib, but they narrowly escaped. The prosecution examined PW2 Dr. Mahesh, who brought on record the medical evidence of Sahib, injured and it was stated by him that three injuries were found on the person of Sahib, injured, i.e., one on his finger and two injuries on his left thigh. From a perusal of the testimonies of PW1 Khurshid and PW3 Mohd. Sahib, these injuries had been caused by Salauddin and Dilshad.

7. While dismissing the application under Section 319 Cr.P.C., the trial Court had recorded the following findings:-

“9. With regard to Sokat, Badan and Rashid, no specific injuries have been attributed to them. The allegations against them that they were armed with lathi and pistol and still they did not inflict any injury to the complainant party. It appears to be highly improbable because it is admitted fact that parties have previous enmity and they had come with the intention to inflict injuries to them and still, being armed with lathi and pistol, as alleged, they did not cause any injury with their weapons to the complainant party who were unarmed. If they had come armed with weapons, then they must have had caused any injury to the complainant party but they did not do so. So, the possibility of over implication of persons, than actually involved, by the complainant can not be denied. Apart from the submission of complainant Khurshid and injured Sahib, which, infact is merely reiteration of what has been stated in the FIR, there is no other evidence before this court on the basis of which complicity of the above said persons can be established. The mere statements, ipso facto, can not form the basis of summoning the persons under section 319 Cr.P.C. Hence, on the basis of the above discussion, it can be sound that there is no evidence on the case file which if goes unrebutted would lead to conviction of above said persons namely Sokat, Badan and Rashid. Accordingly, the present application is hereby dismissed being without any merits”.

8. I have carefully perused the above referred findings recorded by the trial Court and find no reason to deviate from the same. In the present case, the parties were already inimical towards each other and the possibility of false implication of respondents No. 2 to 4 could not be ruled out. First of all, the involvement of respondents No. 2 to 4 was investigated and it was found that they were not involved in the occurrence. Moreover, Sahib, injured had suffered three injuries, which were specifically attributed to Salauddin and Dilshad, against whom, a report under Section 173 Cr.P.C. has already been presented. The only allegations against the respondents No. 2 to 4 that they were armed with lathies and pistols, however, they did not inflict any injury to the complainant party. Thus, the application under Section 319 Cr.P.C. was rightly dismissed by the trial Court.

9. Dismissed.

28.10.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No