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

CRM-M-18062-2026

Date of decision 08.05.2026.

RAM AVTAR AND OTHERS

..... PETITIONERS

VERSUS

STATE OF HARYANA

..... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Present : Mr. Vikram Sheoran, Advocate and
Mr. Kunal Phogat, Advocate
for the petitioners.

SURYA PARTAP SINGH. J.**CRM-14347-2026**

Allowed as prayed for.

Main case

1. This is a petition under Section 528 of the 'Bharatiya Nagarik Suraksha Sanhita, 2023', hereinafter being referred to as "BNSS". The petitioners who are aggrieved of the order dated 28.07.2022 passed by the learned Judicial Magistrate 1st Class, Rohtak, duly affirmed in a revision petition by the learned Additional Sessions Judge Rohtak vide, order dated 19.12.2025, have preferred the present petition.
2. The above-mentioned orders have been issued in the backdrop of the fact that at the instance of 'Raj Bala', hereinafter being referred to as



complainant only, the FIR for the commission of offence punishable under Sections 323, 506, 307 and 326 of Indian Penal Code was lodged in Police Station Kalanaur, District Rohtak. Once the above-mentioned FIR was lodged, the investigation was conducted by the police and on completion of investigation final report, under Section 173 Cr.P.C., was filed by the Investigating Officer before the Court. In the above-mentioned report, five accused, namely 'Ram Avtar', 'Nitin', 'Ritik', 'Vikas' and 'Sushila @ Babli' (the petitioners herein), who were duly named in the FIR, were exonerated, and thus by placing them in column No.12 of the above-mentioned report, they were not prosecuted.

3. Once the report under Section 173 Cr.P.C. was under consideration before the Court of learned Judicial Magistrate, Rohtak, an application under Section 190(1)(b) Cr.P.C. was filed by the complainant and a prayer was made to summon the petitioners as accused to face the trial. The above-mentioned application had been filed on the ground that there was sufficient evidence on record to show that the petitioners were involved in the commission of offence. The above-mentioned application was allowed by the Court of learned Judicial Magistrate, Rohtak, vide order dated 28.07.2022.

4. The record further reveals that the above-said order, dated 28.07.2022, was challenged by the petitioners by filing a revision petition in the Court of Sessions. The above-mentioned revision petition, bearing No.CRR/69/2022, was dealt with by learned Additional Sessions Judge, Rohtak and the learned Additional Sessions Judge Rohtak, vide judgment dated 19.12.2025, dismissed the above-mentioned revision petition. Aggrieved of



both the above-mentioned orders, the present revision petition has been preferred.

5. Heard.

6. It has been contended by learned counsel for the petitioners that the impugned order passed by learned Judicial Magistrate 1st Class, Rohtak dated 28.07.2022 is perverse being outcome of wrong appreciation of fact as well as law. According to learned counsel for the petitioners once the FIR in this case was lodged, a proper investigation was conducted by the Investigating Agency and during the course of investigation, it was recorded that neither the petitioners were having any reason/enmity to indulge in any activity of beating the complainant and his family, nor they were present on the spot at the time of occurrence, and thus, they were innocent. According to learned counsel for the petitioners, the above-mentioned conclusion was drawn by the Investigating Agency by taking into consideration the entire mitigating circumstances and the scientific evidence, and that the learned Court of Judicial Magistrate without going through the entire material, merely, on the basis of conjectures and surmises allowed the application filed by the complainant, and invoked the jurisdiction vested in it by virtue of Section 190(1)(b) to summon the petitioners to face trial.

7. The learned counsel for the petitioners has further contended that the law with regard to summoning of additional accused under Section 190(1)(b) is quite settled, and prescribes that without proper material available on record, merely on the asking of complainant, the jurisdiction under Section 190(1)(b) should not be invoked, to summon additional accused. It has also been contended by learned counsel for the petitioners that the petitioners were



not present on the spot at the time of occurrence and that the above-mentioned fact stood proved from the circumstance that the case in question was a case of version and a cross-version, and at the instance of opposite party also the FIR was lodged and the injuries were suffered by the opposite party, i.e. the party of petitioners also. As per learned counsel for the petitioners since no injury, whatsoever, was suffered by the petitioners, this fact in itself was sufficient to draw an inference that allegation with regard to presence of petitioners on the spot at the time of occurrence was false.

8. While claiming that the learned trial Court vis-a-vis the learned Revisional Court have passed the respective orders, merely, on the basis of presumptions and assumptions, and that the settled principles of law have been ignored, there is immediate requirement for indulgence and interference of extra-ordinary jurisdiction vested in this Court by virtue of Section 528 of BNSS. In view of above, the learned counsel for the petitioners has contended that by allowing the present petition, the impugned order be set aside.

9. The record has been perused carefully.

10. A perusal of record shows that the FIR pertaining to instant case came into being at the instance of 'Raj Bala', hereinafter being referred to as complainant. It was stated by the complainant before the police that her elder son 'Sandeep' was living separately with his wife 'Sonu', and that they had a suspicion that 'Sonu' used to talk to 'Pankaj', the son of her brother-in-law. According to complainant on 16.06.2021 her brother-in-law 'Surender' came to their home and handed over the mobile phone of 'Pankaj'. The complainant further alleged that on 30.06.2021 at around 6:30 AM 'Rajender', 'Surender', 'Ramotar' (the petitioner No.1 herein), 'Nitin' (the petitioner No.2 herein),



‘Ritk’ (the petitioner No.3 herein), ‘Vikas’ (the petitioner No.4 herein), ‘Santosh’ and ‘Babli’ (the petitioner No.5 herein), armed with wooden sticks and bamboo sticks, came their home on the pretext of taking back the mobile phone. According to complainant an assault was launched by the above-named assailants, wherein injuries were suffered by him.

11. On the basis of above-mentioned statement formal FIR of this case was lodged and as already discussed above the final report under Section 173 Cr.P.C. was filed, but by virtue of above-aid report, the present petitioners were not prosecuted. In such circumstances the complainant approached the Court of learned Judicial Magistrate First Class, for summoning of petitioners as accused, by invoking the jurisdiction under Section 190(i)(b) Cr.P.C.

12. Once the application under Section 190(1)(b) was filed by the complainants, the learned trial Court considered the same and recorded the following observations:-

- a) *From the perusal of challan, it transpires that there are sufficient material available on record for summoning the proposed accused namely Ramavtar son of Hari Ram, Nitin son of Rajender, Ritik son of Surender, Vikas son of Ramavtar and Babli wife of Surender, all resident of village Nigana for commission of offences under sections 307, 323, 452, 506, 34 of IPC.*
- b) *Apart from the FIR, the name of the proposed accused is being mentioned by the husband of complainant Radhey Shyam and her son in the section 161 Cr.P.C. statement which was got recorded during investigation by the police*



officials. Therefore, it can be acknowledged that the proposed accused are consistently named in the complaint, section 161 Cr.P.C. Statement and disclosure statement of the co-accused with the allegations that they are present on the spot with alleged weapon i.e. axe and danda and had attributed injuries to the complainant, her husband and her son.

- c) However, there is nothing on record to suggest at this stage that contents of the statement made by the complainant and statements of Radhey Shyam and Naresh recorded under section 161 Cr.P.C. are false and inflicted and are incorrect.*
- d) Moreover, it is well settled law that Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of Cr.P.C. even if the Police report is to the effect that no case is made out against the accused. The Hon'ble Apex Court has further held that at the stage of taking cognizance of offence, the Court is to only see whether prima facie there are reasons for issuing of process and whether the ingredient of the offence are there on record. Qua this reliance can be placed on judgment of Hon'ble Apex Court having title Dr. Mrs. Nupur Talwar vs. C.B.I., Delhi and another 2012(4) RCR Criminal 326 (SC) and Uma Shankar Singh vs. State of Bihar and another 2010(4) RCR Criminal 363 (SC).*



- e) *Further, in landmark Judgment of the Constitutional Bench of Supreme Court, it was held that 'When the Police investigating into an offence and submitting final report before Magistrate under Section 173(2) of Cr.P.C., in which, challan was put against one person and two persons were named in column No.2 and a complaint was received by the Magistrate to summon the person name in column No.2 in cases triable by Court of Sessions, the Magistrate has power to summon the persons named in the column of report, if the Magistrate is satisfied that the prima facie case was made out against the said persons and Magistrate has ample power to disagreed with the Police Report and summoned the said persons on the basis of Police Report without holding any enquiry u/s 190, 200 of Cr.P.C.*
- f) *In view of above discussions and the law laid down by Hon'ble Apex Court it can be said that in the present case prima facie there are sufficient evidence placed on file alongwith challan to summon the proposed accused namely Ramavtar son of Hari Ram, Nitin son of Rajender, Ritik son of Surender, Vikas son of Ramavtar and Babli wife of Surender, all resident of village Nigana for commission of offences u/s 307, 323, 452, 506, 34 IPC. Accordingly, the proposed accused namely Ramavtar son of Hari Ram, Nitin son of Rajender, Ritik son of Surender, Vikas son of Ramavtar and Babli wife of Surender, all resident of village*



Nigana are summoned for the commission of offences under sections 307, 323, 452, 506, 34 of IPC.

13. The above-mentioned order was challenged by virtue of revision petition by the present petitioners and the learned revisional court by virtue of judgment dated 19.12.2025 dismissed the revision petition.

14. As far as the above-discussed facts and circumstances of the present case are concerned, at the very out-set it is pertinent to mention here that it is the case of the prosecution, right from the very beginning that the complainant in the very first statement made before the police, which served as foundation for the FIR, had specifically stated that the present petitioners were the members of assailants party and they were armed with various weapons and actively participated in the commission of crime.

15. In addition to above as recorded by the learned Judicial Magistrate in the statement of witnesses recorded by the Investigating Officer under Section 161 Cr.P.C. namely 'Radhe Shyam' and the son of complainant also, it was specifically mentioned that the petitioners were the members of assailants party and actively participated in the commission of crime.

16. In addition to above, the learned Judicial Magistrate also observed, in the impugned order, that in addition to statement of witnesses, recorded under Section 161 Cr.P.C, even in the disclosure statements of co-accused, the presence of petitioners at the time of commission of offence as members of assailants party was acknowledged.

17. In addition to above, it was also recorded by the learned Judicial Magistrate that there was nothing on record to suggest that the contents of



statement of complainant witnesses and disclosure statement of co-accused were false.

18. If the above-mentioned contents of the order of learned Judicial Magistrate are taken into consideration, it transpires that on the basis of material available on record, a right conclusion was drawn by the learned Judicial Magistrate while holding that *prima facie* a case for the summoning of petitioner as additional accused, by invoking the provisions under Section 190(1)(b) Cr.P.C. was made out. Qua above-mentioned situation it is also relevant to note that for invoking the jurisdiction under Section 190(i)(b), only a *prima facie* case is supposed to be looked into, and the standard of proof, to prove a fact, is not supposed to be the same, which is required to prove a charge.

19. If the above discussed factual matrix of the present case and the relevant law is taken into consideration, it transpires that no error of judgment or appreciation of material was committed by the learned Judicial Magistrate, while drawing an inference that there was sufficient material to summon the petitioners as an additional accused by invoking the jurisdiction under Section 190(1)(b) of Cr.P.C. Thus, it is hereby observed that there is no scope for indulgence or interference in the impugned order.

20. Taking into consideration the above-mentioned observations, once it has been observed that a right conclusion was drawn by the learned Judicial Magistrate while passing the impugned order dated 28.07.2022, it is hereby held that the revision petition has rightly been dismissed by the learned Additional Sessions Judge, and that there is no scope for interference in the



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finding recorded by the learned Additional Sessions Judge in his judgment dated 19.12.2025.

21. As a sequel to above-mentioned observations, it is hereby held that there is no scope for indulgence or interference in the impugned order and the present petition being devoid of merit deserves dismissal. Hence, the same is hereby **dismissed**, accordingly.

(SURYA PARTAP SINGH)
JUDGE

08.05.2026.

vipin Whether speaking/reasoned : Yes
Whether Reportable : No