

In the High Court of Punjab and Haryana, at Chandigarh**Criminal Misc. No. M- 44508 of 2019 (O&M)****Date of Decision: 05.02.2026**

Ishaak and Another

... Petitioner(s)

Versus

State of Haryana and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioner(s).

Ms. Deepali Verma, Assistant Advocate General,
Haryana, for the respondent No.1.

Mr. L.S.Mann. Advocate
for the respondent No.2.

Surya Partap Singh, J.

1. By virtue of this petition under Section 482 of the Code of Criminal Procedure, 1973 the quashing of order dated 26.09.2019 (Annexure P6), hereinafter being referred to as “impugned order” only, passed by the court of learned Additional Sessions Judge, Nuh, in a revision petition, has been challenged.

2. In nut-shell, the facts emerging from the record are that, that for the commission of offence punishable under Sections 148, 149, 323, 324, 325, 326 and 341 of the Indian Penal Code, 1860, and Section 25 of the Arms Act, 1959, the FIR was lodged in Police Station Rozka Mew, District

Mewat, Haryana. In the above mentioned case, after registration of FIR, the

investigation was taken up and during the course of investigation, the Investigating Agency observed that two of the accused, namely 'Sabbir' and 'Ishaak' were not involved in the commission of offence. Thus, the other accused except the above named two persons were prosecuted and sent to the Court to stand trial. During the course of above mentioned trial, an application under Section 319 Cr.P.C. was moved by the complainant for summoning petitioner as additional accused. As per petitioner, although the above mentioned application did not find favour in the learned trial Court, but the revision petition, referred against the order of learned trial Court, has been allowed by the court of learned Additional Sessions Judge by virtue of impugned order.

3. Heard.

4. It has been contended on behalf of petitioners that an error of judgment has been committed by the learned Revisional Court when without proper appreciation of evidence available on record, it has drawn the conclusion that sufficient grounds for summoning of the petitioners as additional accused are made out.

5. The learned counsel for the petitioners has contended that on proper appreciation of facts and evidence available on record, a right view was taken by the Investigating Agency when it exonerated the petitioners from being prosecuted and the above mentioned observation of the Investigating Agency was duly approved by the learned trial Court. According to learned counsel for the petitioners, however, in utter disregard to the settled principles of law and without appreciating the evidence, the learned Revisional Court has allowed the revision petition and issued a

direction to the learned trial Court to summon the petitioners as additional accused. The learned counsel for the petitioners has further contended that the impugned order is against the facts as well as law and therefore, the same is not sustainable. While referring to the principles of law laid down by the the Hon'ble Supreme Court of India in the case of 'Shiv Baran v. State of U.P. and Another' 225 SCC Online SC 457, the learned counsel for the petitioners has sought intervention and indulgence of this Court in the impugned order.

6. In addition to above, the learned counsel for the petitioners with regard to allegations attributed to the petitioner No.1 has referred to the testimony of PW.3-Dr. Sanjay Bajpai wherein it has been deposed by the above named doctor that there was no sharp-edged injury on the ear and right thigh of the injured.

7. The above mentioned arguments have been controverted by the learned State counsel being assisted by learned counsel for the complainant/respondent No.2. During the course of arguments, the learned counsel for the respondent No.2 has fairly conceded that the opinion formed by the learned Revisional Court with regard to summoning of petitioner No.2-Sabbir is not in conformity with the factual matrix of the case and the relevant law.

8. However, with regard to summoning of petitioner No.1-Ishaak the learned counsel for the respondent No.2 has contended that there was very specific and categorical allegation at the first instance in the complaint which served as foundation of FIR, that the petitioner No.1 armed with sharp-edged weapon had inflicted injuries on the person of complainant. As

per learned State counsel the above mentioned allegations were duly supported and corroborated by the medico-legal report. According to learned counsel for the respondent No.2, the Investigating Agency had acted in an unfair manner when despite the availability of above mentioned material, the petitioner No.1 was not prosecuted. In addition to above, the learned counsel for the respondent No.2 has further contended that the learned Revisional Court has properly analyzed all the facts and circumstances of the present case viz-a-viz evidence, and that a right conclusion has been drawn by the learned Revisional Court.

9. The record has been perused carefully.

10. As far as the instant case is concerned, at the very outset it is pertinent to mention here that in the impugned order, the learned Revisional Court has returned its finding in the following words:-

“7. The complainant has been examined as PW1 and has mentioned Ishak as one of the assailants, with a similar allegation that he assaulted him with a knife. The MLR of the injured party is also on record, which corresponds to this oral version of the complainant's testimony.

8. However, the name of Sabbir is apparently missing from all these relevant documents, such as the complaint or the material witness evidence examined so far.

9. In this scenario, there is sufficient material that refers to Ishak as having been part of the group of assailants who attacked the complainant on the date of the incident. However, there is not sufficient material that identifies the named person

Sabbir in a similar manner.”

Findings qua Petitioner No.2-Sabbir

11. A bare perusal of above mentioned findings in itself show that the learned Revisional Court has observed that there was no sufficient material against the petitioner No.2-Sabbir. However, despite the above mentioned observations the learned Revisional Court proceeded to direct the learned trial Court to hear the matter with regard to summoning of petitioner No.2-Sabbir. Once dissatisfaction was recorded by the learned Revisional Court that there was no material qua petitioner No.2-Sabbir, there was no occasion for the learned Revisional Court to issue a direction to the learned trial Court to re-hear the matter with regard to above mentioned aspect.

12. Thus, qua petitioner No.2-Sabbir, the impugned order passed by the learned trial Court is perverse and unsustainable in the eyes of law. Hence, it is hereby held that qua petitioner No.2-Sabbir the impugned order deserves to be set aside.

Findings qua Petitioner No.1-Ishaak

13. As far as the allegations qua the petitioner No.1-Ishaak are concerned the relevant law with regard to summoning of additional accused by invoking the jurisdiction Section 319 Cr.P.C. has been laid down by the Hon’ble Supreme Court of India in the case of ‘Shiv Baran’ (supra) wherein the Hon’ble Supreme Court of India has observed that power to summon an additional accused during trial must be exercised cautiously by the Court, and that it should be based upon a strong and cogent evidence. The test of satisfaction has also been elaborated in the above mentioned judgment and it

has been observed by the Hon'ble Supreme Court of India that the Court must form an opinion that the evidence presented is more than a mere probability of complicity but less than the degree of satisfaction required for conviction. It has also been observed by the Hon'ble Supreme Court of India that the court must exercise utmost caution and avoid conducting a mini-trial at this stage.

14. The guidelines for summoning of additional accused by invoking the jurisdiction under Section 319 Cr.P.C. have been laid down by the Hon'ble Supreme Court of India in the case of 'Hardeep Singh v. State of Punjab and Others' 2014 SCC Online 26, wherein it has been observed that "the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge - The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is the course of such trial that materials are disclosed against the newly summoned accused".

15. In the light of principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Hardeep Singh' (supra), if the factual matrix available on the record are analyzed, it transpires that except the testimony of complainant on oath which was identical to the statement given to the police before registration of FIR there was no additional material on record to show the involvement of petitioner No.1-Ishaak in the commission of offence.

16. In addition to above, it is also relevant to note that as per allegations of the complainant at the time of commission of offence, the

petitioner No.1 was armed with a knife and he inflicted injury on the ear and right thigh of the complainant. The above mentioned description of role of petitioner No.1 as depicted by the complaint/PW.1 does not find support from the testimony of Medical Officer (Annexure P-7), who has already been examined as PW.3 and who has deposed that there was no injury caused by sharp-edged weapon on the ear and right thigh of the complainant.

17. Since the testimony of Medical Officer, who is otherwise an independent witness, carries a very high probative value in comparison to the deposition of complainant who is an interested witness, it is hereby held that the above mentioned medical evidence instead of providing any support to the respondent No.2, has virtually demolished the plea of respondent No.2 that with a sharp-edged weapon the injuries were caused by the petitioner No.1 on the ear and right thigh of the complainant/respondent No.2.

Conclusion

18. As a sequel to above mentioned observations, it is hereby held that the learned Revisional Court has committed an error of judgment when without proper appreciation of facts as well as evidence available on record, it has accepted the revision petition and issued a direction to the learned trial Court to reconsider the application with regard to summoning of the petitioners as additional accused. Thus, it is hereby held that there is need for indulgence and interference in the impugned order, by exercising the extraordinary jurisdiction of this Court.

19. As a sequel to above mentioned observations, it is hereby held that the impugned order deserves to be quashed. Hence, the present petition is **allowed** and the impugned order is hereby ordered to be quashed.

20. The pending miscellaneous application(s), if any, shall stand disposed of.

(Surya Partap Singh)
Judge

February 05, 2026
“DK”

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