

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Crl. Misc. No. M-23465 of 2015
Date of decision : 12.08.2015**

Gurmail Singh and another

..... Petitioners

versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. P.S. Ahluwalia, Advocate
for the petitioners**

Mr. V.P.S. Sidhu, AAG Punjab

**Mr. Kawaljyot Singh, Advocate
for respondent No. 2**

ANITA CHAUDHRY, J. (ORAL)

The petitioners have been summoned under Section 319 Cr.P.C. to face the trial in a case FIR No. 239 dated 20.09.2014 registered under Section 302 IPC at Police Station Sadar Samana, District Patiala.

The police had challaned Amandeep Singh and trial had commenced. The private witnesses did not support the prosecution case. The State filed an application under Section 319 Cr.P.C. to summon the additional accused as the dying declaration had been made by Harneet Kaur who had named some more persons.

The Additional Sessions Judge, Patiala vide his order dated 20.05.2015 (Annexure P-4) had ordered a separate trial against the newly arrayed accused and had adjourned the case for statement of accused (Amandeep Singh) thereby separating the trial

holding that the accused were in custody and it would be a case of hardship.

Aggrieved with the order the petitioners, the additional accused, parents of Amandeep Singh have laid challenge to the order that the approach adopted by the trial Court was not correct and it seriously prejudiced their case as the outcome of the case against Amandeep Singh would have direct impact on their case and their fate would be sealed even before the trial commenced.

Notice was given to the respondents. Respondent No. 2 is the accused facing trial. His stand was that he had no objection if the trial against all was held *de novo*.

On the last date of hearing, learned counsel for the petitioners had sought adjournment to seek instructions. He states that the evidence of the prosecution had commenced in February 2015 and the entire evidence had been recorded in three months and additional accused had been summoned on 16.04.2015 and they would cross-examine only four witnesses and trial can be joint. It was stated that he has instructions to state on behalf of the petitioners that they want to cross examine Mr. R.P.S. Cheema PW-1, Dr. Anil Singla PW-5, ASI Harpal Singh PW-8 and Dr. Sandeep Kumar PW-9. He states that they would make a statement before the Court in this regard and that their examination-in-chief be read as it is and they would also make a statement that the evidence earlier led by the prosecution as it may be read on their behalf and they would not cross examine the remaining witnesses and that would not delay the trial.

The intention of the trial Court ordering separate trial was keeping in view the observations in ***Babubahi Bhimabhai Bokhiria and another vs. State of Gujarat and others (Crl. Appeal No. 735 of 2014, decided on 03.04.2014)*** and as it would lead to serious jeopardy on account of entire process be followed again and thus violate the rights of remaining accused.

Now only 4 witnesses are sought to be recalled for cross examination, therefore, in these peculiar circumstances the prayer is accepted without entering into the issues raised in the petition and will not be taken as a precedent.

The petitioners would appear in the Court on 24.08.2015 and get their statements recorded as referred above. Order dated 20.05.2015 (Annexure P-4) is set aside. The petition is disposed of with aforesaid directions.

August 12, 2015

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**(ANITA CHAUDHRY)
JUDGE**