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

CRR No.2905 of 2013

Date of Decision: January 20, 2015.

Rajesh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jitender Dhanda, Advocate
for the petitioner.

Ms. Dimple Jain, AAG Haryana.

Mr. G.C. Shahpuri, Advocate
for respondents No.2 to 4.

SABINA, J.

Petitioner has filed this petition challenging the order dated 29.08.2013 whereby application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) to summon respondents No.2 to 4 as additional accused, was dismissed.

Learned counsel for the petitioner has submitted that respondents No.2 to 4 had accompanied their co-accused armed with weapons at the time of occurrence and were liable to be summoned to face the trial as additional accused.

Learned counsel for the respondents No.2 to 4 on the other hand has opposed the petition and has submitted

that the said respondents were found innocent during innocent and no specific injury was attributed to them.

Section 319 of Cr. P.C. reads as under:-

“Power to proceed against other persons appearing to be guilty of offence:-

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
- (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
- (4) Where the Court proceeds against any person under sub-section (1), then-*
 - (a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.*
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*

Thus, as per the above provision, the Court has ample power to summon a person as an additional accused to face the trial with the accused already facing trial, if there is enough material on record to proceed against the said person.

Prosecution story in brief is that on 13.12.2011, complainant alongwith Partap and Dariya Singh, Harpal, Sandeep, Suresh, Kamla, Rajbala and Atma Ram had gone to

close the gate of their plot. It was about 3:30 P.M. Lichhma, Poonam (respondent No.3), Bala alias Supari (respondent No.4), Raj Kumar were standing near the gate. When the complainant asked them to close the gate, they attacked the complainant party. Lichhma and Poonam who were armed with *lathi* and *danda*, gave injuries on the head of Kamla. Raj Kumar and other caused injuries to Rajbala and Harpal. In their self-defence complainant party threw stones at the accused. In the meantime, Krishan (respondent No.2) Mahender and Rajbir came to the spot. Krishan was armed with a pistol. Mahender and Rajbir were armed with guns. Dholu and Satbir were armed with *barchha*. They attacked the complainant party. Mahender fired a short at Sandeep. Complainant party raised hue and cry. Thereafter, accused fled away from the spot while firing in the air. After completion of investigation and necessary formalities, challan was presented against accused Jaibir, Mahender, Raj Kumar and Dholu. During the pendency of the trial, prosecution moved an application under Section 319 Cr. P.C. for summoning respondents No.2 to 4 as additional accused.

Trial Court while dismissing the application has held that, although, as per FIR, respondent No.2-Krishan was armed with pistol, but there was no allegation that he had fired a short at the complainant party. So far as respondent No.3-Poonam is concerned, she is attributed injury on the

head of Kamla alongwith Lichhma. However, only one injury was found on the person of Kamla. The fire arm injury was on account of shot allegedly fired by accused Mahender. So far as respondent-Bala is concerned, he was attributed injuries to Rajbala and Harpal but no injuries had been suffered by the said persons. Moreover, PW1 Rajesh had deposed that Poonam, Bala and Raj Kumar had tried to cause injuries to Harpal and Rajbala but they had warded off the attack. Respondents No.2 to 4 were found innocent during investigation. Hence, reasons given by the trial Court while dismissing the application, are sound reasons .

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

January 20, 2015
m.singh