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

CRR No.3142 of 2013

Date of decision: January 29, 2015

Jaideep

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

Ms. Dimple Jain, AAG Haryana.

Mr. Salil Bali, Advocate
for respondents No.2 to 4.

SABINA, J

Petitioner has filed this petition challenging the order dated 03.08.2013, whereby application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short), for summoning respondents No.2 to 4 as additional accused, was dismissed.

Learned counsel for the petitioner has submitted that specific allegations had been levelled against respondents No.2 to 4 in the FIR that they had pelted stones on the complainant party alongwith their mother Sumitra from roof of their house. PW-2 Jaideep while appearing in the witness box had also deposed to the similar fact. Trial Court had erred in dismissing the application moved by the prosecution under section 319 Cr. P.C.

Learned State counsel has supported the submissions made by the learned counsel for the petitioner.

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

petitioners were found innocent during investigation. In fact, entire family of the said respondents had been involved in the case.

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 any person as 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.

In the present case, FIR in question had been registered at the instance of complainant-Jaideep. As per the complainant, on 20.08.2011 at about 5:00 PM, he was present in his house and construction work of *phirni* of the village was in progress. Khushi Ram said that he would not allow the water

outlet of house of the complainant in the drain. In this regard, a quarrel took place. Khushi Ram threatened the father of the complainant that he would teach them a lesson. After 15-20 minutes, four young persons came on two separate motorcycles and entered the house of Khushi Ram. After 5-7 minutes, Sumita, Pinki, Jyoti and Monika started pelting stones on the complainant party from the roof of their house. Then Sant Ram, Mukesh, Ravi, Kapil and Khushi Ram and four other young persons armed with iron rods, *jelly*, khife and pistols came in the street. Complainant party was also present in the street. Ravi, Mukesh, Kapil and Khushi Ram inflicted injuries on the person of the complainant as well as Jaideep with their respective weapons.

During investigation, respondents No.2 to 4 were found innocent and challan was presented against six persons.

During the pendency of trial, prosecution moved an application for summoning the respondents No.2 to 4 as additional accused. Trial Court while dismissing the application has held as under:-

“17. In the application, it is asserted that all the three daughters of Khushi Ram, namely, Jyoti, Pinki and Monika were also present amongst other accused persons when accused persons were inflicting brick blows on the person of Jaideep, but PW2 in his deposition has not clarified whether any such stone struck to him or to any one else. Otherwise also pelting of stones from the roof top is not the main part of the occurrence as actual occurrence has taken place subsequently when injuries with knife, iron-rod and jelly, etc., were given. When the main occurrence took place, there was no stone pelting. Accused who participated in the main occurrence are already facing the trial. Accused Sumitra was although no participating in the main occurrence, but she is also facing the trial presumably for pelting stones. Thus, even if the version of complainant (PW2) qua the aspect of pelting of stones is admitting to be correct at this stage, for argument sake, accused Sumitra is there as the person responsible for the same. Police has also investigated this aspect and found no force in the

allegations of stone pelting by three ladies, who are now being desired to be summoned as additional accused.

18. Going by the totality of facts and circumstances, this court has no dearth in concluding that evidence of PW2 is a tutored revelation qua the additional accused Pinki, Jyoti & Monika and to that extent does not pass the test of credibility. Name of the three daughters of accused Khushi Ram & Sumitra have been taken just to involve all the family members of the accused party. They have been found innocent during investigation and this court finds no ground to summon any amongst them as an additional accused at this stage of trial.”

The reasons given by the trial Court while dismissing the application moved by the prosecution under Section 319 Cr. P.C., are sound reasons. So far as respondents No.2 to 4 are concerned, the allegations against them were that they had pelted stones from roof top on the complainant party. During the course of arguments, learned counsel for the petitioner has failed to point out any medical evidence supporting the allegations levelled against the respondents No.2 to 4.

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

Dismissed.

**(SABINA)
JUDGE**

January 29, 2015

m.singh