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

CRR No.3799 of 2013

Date of decision: January 30, 2015

Ram Kunwar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anshumaan Dalal, Advocate
for the petitioner.

Ms. Dimple Jain, AAG Haryana.

Mr. Rajesh Hooda, Advocate
for the respondent No.2.

SABINA, J

Petitioner has filed this petition challenging the order dated 10.09.2013 whereby application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short) for summoning the respondent No.2 as additional accused, was dismissed.

Learned counsel for the petitioner has submitted that during investigation, statement of PW1-Rohtash was recorded under Section 161 Cr. P.C. The said witness had specifically stated that the car in which the deceased was abducted, was driven by respondent No.2. To the similar effect is the statement of PW1-Rohtash while appearing in the witness-box during trial. Trial Court had erred in dismissing the application moved by the prosecution under Section 319 Cr. P.C. for

summoning respondent No.2 as additional accused.

Learned counsel for respondent No.2, on the other hand, has opposed the petition and has submitted that the said respondent was found innocent during investigation and had been falsely involved in this case. Respondent No.2 was not named in the FIR.

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.

Prosecution story in brief is that on 14.06.2012 at

about 8:00 PM, Parveen and his three friends quarreled with Shamsheer son of the complainant. At about 10:00 PM, accused forcibly took Shamsheer in their car and threatened that they would kill him. Admittedly, statement of Rohtash brother of the deceased was recorded under Section 161 Cr. P.C., wherein he had specifically stated that the car in which Shamsheer singh deceased was forcibly taken by the accused, was driven by Sunil-respondent No.2. To the similar effect, is the statement of PW-1 Rohtash when he appeared in the witness box during trial. Thus, there was enough material on record to summon respondent No.2 to face the trial as an additional accused. Trial Court fell in error while dismissing the application on erroneous considerations.

Accordingly, this petition is allowed. Impugned order dated 10.09.2013 is set aside. Consequently, application moved by the prosecution under Section 319 Cr. P.C. for summoning respondent No.2 to face the trial as an additional accused, is allowed.

**(SABINA)
JUDGE**

January 30, 2015
m.singh