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

**CRR No.1928 of 2015 (O&M)
Date of Decision: October 19, 2015.**

Om Parkash

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Ms. Mahima, AAG Haryana.

Mr. Bipan Ghai, Senior Advocate with
Mr. Sandeep Gahlawat, Advocate
for respondents No.2 and 3.

SABINA, J.

Petitioner has filed this petition challenging the order dated 11.05.2015, 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 and 3 to face the trial as additional accused, was dismissed.

Learned counsel for the petitioner has submitted that the FIR was promptly registered in this case. Respondents No.2 and 3 were specifically named in the FIR.

Learned Senior Counsel for respondents No.2 and 3 has opposed the petition and has submitted that

respondents No.2 and 3 were found innocent during investigation. Respondent No.2 Ashu was aged fourteen years and had been falsely involved in this case being son of accused Vijay. So far as accused Karambir is concerned, he is cousin brother of accused Ishwar. In fact, Ishwar and his sons were facing trial. During investigation, respondents No.2 and 3 were found innocent.

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.

Annexure P-2 is the statement of the complainant Om Parkash. A perusal of the same reveals that while appearing in the witness-box as PW1, he deposed that his brother Dalbir was going ahead of him on 29.11.2014 at about 7:00 PM from their fields towards their house. When Dalbir reached the fields of accused Vijay, he was surrounded by Ishwar, Vijay, Sandeep, Ashu and Karambir armed with *gandasies* and swords. Then all the accused inflicted injuries on the person of Dalbir with their respective weapons. When the complainant tried to intervene, they were also threatened by accused Vijay. Thereafter, all the accused fled away from the spot with their respective weapons.

During investigation, respondents No.2 and 3 were found innocent and challan was presented against accused Sandeep, Vijay and Ishwar. During the pendency of the trial, an application was moved by the prosecution for summoning respondents No.2 and 3 to face the trial as additional accused. Vide the impugned order dated 11.05.2015, the said application was dismissed. Hence, the present petition by the petitioner-complainant.

Respondent No.2 is son of accused Vijay and is

aged about fourteen years. So far as respondent No.3 is concerned, he is cousin brother of accused Ishwar. During investigation, it transpired that respondents No.2 and 3 were not present at the spot. No specific overt act has been attributed to respondents No.2 and 3 by the complainant while appearing in the witness-box or at the time of lodging of the FIR.

Keeping in view the facts and circumstances of the present case, the learned trial Court rightly dismissed the application moved by the prosecution under Section 319 Cr. P.C. for summoning respondents No.2 and 3 to face the trial as additional accused.

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

Dismissed.

(SABINA)
JUDGE

October 19, 2015
mahavir