

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

**CRR No. 2055 of 2015
Date of decision: - 03.09.2015**

Sushil Kumar

...Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

SHEKHER DHAWAN

Present revision petition is challenge to the order dated 06.05.2015, passed by Additional Sessions Judge, Kurukshetra, whereby application under Section 319 Cr.P.C. for summoning of Ramesh Kumar son of Rishi Ram as additional accused was dismissed.

2. Relevant facts of the case that FIR No.507 dated 22.06.2013 under Sections 307, 285, 336, 427, 34 IPC and Section 27 of the Arms Act was registered on the written complaint made by Sushil Kumar Gupta son of Rishi Ram Aggarwal. As per prosecution case, on 22.06.2013, Rishi Ram, Ramesh and Varun Kumar had fired two gun shots at his son Tarun and his friends but fortunately none of them was injured. They also damaged the cars belonging to the complainant. During the course of investigation, Rishi Ram, Ramesh and Varun Kumar were arrested on 22.06.2013. Thereafter,

on the complaint made by Rishi Ram Aggarwal cross-case registered

against Sushil Kumar Gupta, Tarun son of Sushil Kumar, Jiteshwar, Karandeep and Grish alias Sunny. On 27.06.2013, SIT was constituted and Sections 307 and 34 IPC were added. After completion of the investigation, challan was presented.

3. In the application under Section 319 Cr.P.C., the main plea was taken that Ramesh Kumar son of Rishi Ram was present at the spot along with his son when they fired gunshot with double barrel gun and Ramesh had actively participated in the commission of the said offence. Name of Ramesh Kumar was specifically mentioned and subsequently his name had also come in the statement of witness under Section 161 Cr.P.C.

4. Learned trial Judge after recording the statement of Jiteshwar (PW6) friend of son of complainant and statement of Sushil Kumar Gupta formed the opinion that except the statement of Sushil Kumar Gupta there was no evidence on record to show the presence of Ramesh Kumar or his involvement. Learned counsel for revisionist took the plea that learned trial Judge has not considered the fact that name of Ramesh Kumar find mentioned in the FIR. Thereafter, in the report under Section 173 Cr.P.C. and thereafter in the statement of prosecution witness before the Court. Ramesh Kumar is the main accused, who was present on the spot and he is required to be tried as co-accused but learned trial Judge dismissed the application without considering these facts and the revision petition be accepted. On this point, learned counsel for the revisionist placed reliance upon judgment from Hon'ble Supreme Court in case **Hardeep Singh Vs. State of Punjab and others**, 2014(1) R.C.R. (Criminal) 623. Learned counsel for revisionist contended that as per law laid down Hon'ble

person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged. For that purpose, the word “evidence” in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

5. Having considered the submissions made by learned counsel for the revisionist and record of the case, this Court is of the considered view that there is no dispute on the proposition of law that trial Court has power to summon any person as an accused even though his name, is not mentioned in the FIR. But at the same time law casts a duty upon the trial Court to scrutinize the entire material and evidence cautiously and the power is to be exercised judiciously and not merely on the asking of either party. Learned trial Judge has already appreciated the evidence and was cautious of the fact that power has to be essentially exercised only on the basis of the evidence. Learned trial Judge also rightly formed the opinion that words “it appears” are not to be read lightly and as per law laid down by Hon'ble Supreme Court in cases Sarojben Ashwinkumar Shah etc. Vs. State of Gujarat and others, 2011(3) R.C.R. (Criminal) 852; Ram Singh and others Vs. Ram Niwas and another, 2009(3) R.C.R. (Criminal) 501 and Babubhai Bhimbhai Bokhiria and another Vs. State of Gujarat and others, 2014(2) R.C.R. (Criminal) 915, wherein, such a law was laid down.

6. In view of law laid down by Hon'ble the Supreme Court in above mentioned judgments (supra), the order passed by learned trial Judge does not call any legal infirmity and there are no grounds to set aside the order or to interfere with the judicial discretionary power exercised by the

7. Resultantly, the present revision petition without any merit and same stands dismissed.

September 03, 2015

naresh.k

(SHEKHER DHAWAN)

Judge