

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

**Criminal Revision No. 3196 of 2014
Date of Decision: 04.02.2015.**

Rajinder Puri and anotherPetitioners

Vs.

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.P.S.Sidhu, Advocate
for the petitioners.

Mr. Deep Singh, AAG, Punjab
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SABINA, J.

Petitioners have filed this petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 01.8.2014 whereby they were ordered to be summoned to face the trial as additional accused on an application moved by the prosecution under Section 319 Cr.P.C.

Learned counsel for the petitioners has submitted that as per the prosecution case, assailants had fired at the complainant at the instance of the petitioners. Challan was presented against Gopal Sharma and Gaurav Manro as their names were disclosed by the complainant when his initial statement and supplementary statement were recorded by the police. However, during trial, complainant as well as PW-4 Bhushan Thapar had failed to identify the accused who were facing trial. In these circumstances, petitioners could not be summoned to face the trial on an application moved by the

prosecution under Section 319 Cr.P.C.

Learned State counsel, on the other hand, has opposed the petition and has submitted that the complainant as well as PW-4 Bhushan Thapar had duly named the petitioners while appearing in the witness box and had specifically stated that the assailants had fired at them at the instance of the petitioners.

Section 319 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 Trial Court may summon any person to face the trial as an accused if there is sufficient material available against the said person during trial to proceed against him.

Admittedly, in the present case, challan was presented against Gopal Sharma and Gaurav Manro. The case of the complainant was that the accused, who were facing trial, had fired at the complainant party at the instance of the present petitioners. However, complainant while appearing in the witness box as PW-3 and Bhushan Thapar-injured while appearing in the witness box as PW-4 have stated that the persons who were facing trial, had not fired at them. Although, PW-3 and PW-4 had stated that the petitioners in conspiracy with each other, had hired some persons to make an attack on their life but the fact remains that they had failed to identify the alleged assailants who were facing the trial. The persons who were facing the trial, had allegedly fired at PW-3 and PW-4 at the instance of the petitioners but the witnesses had failed to identify the accused who were facing trial. In these circumstances, the petitioners could not have been summoned to face the trial as additional accused on an application moved by the

prosecution under Section 319 Cr.P.C. as there was no material on record as to who had fired at the complainant party. Unless the persons who had fired at the complainant party, were identified, petitioners could not be summoned to face the trial on the allegations that the assailants had fired at their instance. Thus, the Trial Court while allowing the application moved by the prosecution under Section 319 Cr.P.C. for summoning the petitioners as additional accused, has committed a patent error.

Accordingly, this petition is allowed. Impugned order dated 1.8.2014 is set aside. Consequently, the application moved by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as additional accused, is dismissed.

**(SABINA)
JUDGE**

February 04, 2015
Gurpreet