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

CRR No.3612 of 2014

Date of Decision: January 20, 2015.

Sadam and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Satinder Kumar Rana, Advocate
for the petitioners.

Ms. Dimple Jain, AAG Haryana.

SABINA, J.

Petitioners had filed this petition challenging the order dated 06.10.2014, whereby they were ordered to be summoned to face the trial as additional accused on an application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short).

Learned counsel for the petitioners has submitted that, although, PW3 has attributed injury on his head with an iron rod by the petitioner No.2, but as per the medical evidence, there was only one injury on the occipital region of PW3. The said injury was attributed to accused Farman, who was already facing the trial. However, petitioners No.1 and 3 were attributed injuries on the person of Irshad son of PW3 and Irshad was not got medically examined. Petitioners were found innocent during investigation.

Learned State counsel, on the other hand, has opposed the petition.

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.

In the present case, a perusal of statement of PW3 Sukardeen reveals that he has stated that petitioner No.2 Samaydin had inflicted a blow on his head with an iron rod and Farman had given an iron rod blow on the right side of his head. So far as Farman is concerned, he is already facing the trial. Petitioner No.2 was found innocent during investigation. PW1 Doctor Sukhpreet Singh who had medico legally examined PW3 deposed that bone deep lacerated wound of 3x.5 centimeter was found on the occipital region of the injured. Thus, as per the

medical opinion, there was only one injury on the person of PW3. So far as injury on the head of PW3 is concerned, accused Farman is already facing the trial. Petitioners No.1 and 3 are attributed injuries on the person of Irshad son of PW3. Admittedly, Irshad was not medico legally examined. Thus, there is no medical opinion on record qua the injuries suffered by Irshad. Apparently, due to this reason, petitioners No.1 and 3 were declared innocent during investigation. The trial Court, thus fell in error while allowing the application moved by the prosecution under Section 319 Cr. P.C. for summoning the petitioners to face the trial as additional accused. After thorough investigation of the case, challan was presented against five accused. In the facts and circumstances of the present case, it is evident that petitioners were rightly found innocent during investigation.

Accordingly, this petition is allowed and impugned order dated 06.10.2014, is set aside.

**(SABINA)
JUDGE**

January 20, 2015
m.singh