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

CRR No.52 of 2015

Date of decision: January 12, 2015

Satpal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Dr. Naresh Kaushik, Advocate
for petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 09.12.2014, whereby application moved by the prosecution to summon respondents No.2 to 5 as additional accused, was dismissed.

Learned counsel for the petitioner has submitted that the trial Court had erred in dismissing the application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short). Learned counsel has further submitted that the injured while appearing in the witness box has attributed specific injuries to respondents No.2 to 5. Even the trial Court while dismissing the application has observed that respondent No.2 had been attributed injury to PW3 Ishma, which has been declared dangerous to life.

Section 319 of Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) 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.

The trial Court while dismissing the application has observed as under:-

“Of course second application under Section 319 Cr. P.C. is maintainable. But, there is no merit in the present application. This Court has perused the statements of witnesses recorded under Section 161 Cr. P.C. in which no specific role is attributed to the present persons whose summoning is being sought. PW1 has deposed specific roles attributed to two of the accused namely Vijay and Vikash who have been summoned as additional accused under Section 319 Cr. P.C. vide order dated 21.11.2013. As there was no evidence on the file against the persons whose summoning is being sought as additional accused by way of present application under Section 319 Cr. P.C. Otherwise there is no end of such kind of applications as after examining one witness the prosecution has examined three witnesses PW1 to PW3 who deposed in the manner as described in application just to fill up the lacuna left earlier by PW1. Now PW1 to PW3 had exaggerated and improved their version from the statement recorded under Section 161 Cr. P.C. to fill up the lacuna which was left by PW1. Such kind of act cannot be allowed as no documentary evidence has been adduced by the prosecution. Moreover, there are three injuries on the person of PW Ishma and only one injury on the person of Satta as mentioned in their respective MLRs. Six of the accused are already facing trial and it becomes a trend to implicate all family members in such like cases. Therefore, present application being without merits stands dismissed.”

The reasons given by the trial Court while dismissing the application are sound reasons. Respondents No.2 to 5 were, although, named by the injured in their statements recorded under Section 161 Cr. P.C., but no specific injury was attributed to respondents No.2 to 5 by the injured or the complainant

when their statements were recorded. Thus, the prosecution witnesses while appearing in the witness box had made improvements in their statements, which were recorded during investigation under Section 161 Cr. P.C. A perusal of the FIR also shows that no specific injury was attributed to respondents No.2 to 5.

In these circumstances, no ground for interference by this Court, is made out.

Dismissed.

January 12, 2015

m.singh

**(SABINA)
JUDGE**