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

**Date of decision: August 18, 2015
CRR No.996 of 2015 (O&M)**

Jagbir Singh

.....Petitioner

Versus

Sate of Punjab and another

.....Respondents

CRR No.2225 of 2015

Manpreet Singh and another

.....Petitioners

Versus

Sate of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.K. Dogra, Advocate and
Mr. A.S. Manaise, Advocate
for the petitioners.

Mr. P.S. Ghuman, Add. AG Punjab.

Mr. Viney Kumar, Advocate for
Mr. Karanjit Singh, Advocate
for respondent No.2.

SABINA, J

Vide this order, above mentioned two petitions would be disposed of as the petitioners have challenged the order dated 12.02.2015, whereby, they were 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 so far as the petitioners are concerned, no overt act was

attributed to them. Petitioners were found innocent during investigation. It had transpired during the course of investigation, that the petitioner-Jagbir Singh was not present in the village at the time of occurrence.

Learned State counsel as well as counsel for the complainant, on the other hand have opposed the petition and have submitted that the petitioners were duly named in the FIR and had actively participated at the time of occurrence along with their co-accused.

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 any person as 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.

Prosecution story in brief is that on 20.06.2014 at about 7:30 PM, complainant Gurbir Singh and his uncle Hardeep Singh were returning from their fields. When they reached in front of the house of Lovejeet Singh, they saw that Lovejeet Singh armed with 12 bore gun, Randeep Singh armed with *dattar*, Jagbir Singh empty handed, Ravisher Singh armed with *kirpan* and Manpreet Singh armed with *gandasi* were standing there. On a *lalkara* raised by Jagbir Singh, Lovejeet Singh fired at Hardeep Singh. As a result of this, Hardeep Singh fell down. Randeep Singh gave a *dattar* blow on the forehead of the complainant. Ravisher Singh and Manpreet Singh were shouting that nobody should be spared. On hearing alarm raised by the complainant, his uncle Parminder Singh came to the spot. All the accused fled away from the spot with their respective weapons.

After completion of investigation and necessary formalities, challan was presented against Lovejeet Singh. During the pendency of the trial, prosecution moved an application under Section 319 Cr. P.C. Vide the impugned order, the said application was allowed. Hence, the present petitions by the petitioners.

Application was moved by the prosecution under Section 319 Cr. P.C. after recording of the statement of the

complainant as PW1. Complainant while appearing in the witness box as PW1 deposed as per the contents of the FIR. Thus, a perusal of the FIR as well as the statement of the complainant (as reproduced at page 10 of the petition) reveals that specific injuries were attributed to accused Lovejeet Singh and Randeep Singh. So far as petitioners Jagbir Singh, Ravisher Singh and Manpreet Singh are concerned, they were not attributed any specific injury. Jagbir Singh accused is stated to be empty handed at the time of occurrence and had allegedly raised a *lalkara*. Although, accused Ravisher Singh and Manpreet Singh are alleged to be armed with *kirpan* and *gandasi* respectively, but no overt act was attributed to them except the fact that they were shouting that the complainant party be not spared. After thorough investigation of the case, petitioners were found innocent.

Since no specific injury has been attributed to the petitioners, the trial Court fell in error in ordering the summoning of the petitioners to face the trial as additional accused under Section 319 Cr. P.C.

Accordingly, both petitions are allowed. Impugned order 12.02.2015, to the extent, whereby, petitioners were ordered to be summoned to face the trial as additional accused, is set aside.

**(SABINA)
JUDGE**

August 18, 2015
mahavir