

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

**CRM No.M-39041 of 2015 (O&M)
Decided on: 21.08.2017**

Ram Chand and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashit Malik, Advocate
for the petitioners.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This is a petition filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') seeking quashing of the order dated 15.10.2015 (Annexure P11) passed by the Appellate Court in FIR No.69 dated 29.06.2010 registered under Sections 323, 341, 427, 395, 397, 148 and 149 of the Indian Penal Code (in short 'IPC') and 25 of the Arms Act, at Police Station Hassanpur, District Palwal.

While issuing notice of motion, the following order was passed:-

“Application under Section 319 Cr.P.C for summoning an additional accused filed by the complainant was dismissed by the trial Court. Vide order dated 13.02.2015 in a revision petition filed, the Additional Session Judge has set aside that order by observing as follows:

“Having heard learned counsel for revisionist, respondents and learned Public Prosecutor for the State, I reached to the findings, that the names of the persons, to be summoned were stated in the application, moved by Net Ram complainant. When he was examined in the Court,

as PW-3, who has specifically stated the names of these persons. When, the challan was presented, the police has put their names in columns no.2, while stating that they were found innocent, but nothing has been stated in the report under Section 173 Cr.P.C., on the basis of which material, they were found innocent when the evidence recorded in the Court. The trial Court has declined the application, just on the ground that there is no sufficient evidence against the accused, to be summoned under Section 319 Cr.P.C., and also relied case laws, but this Court is of the view that when there is specific names and role have been attributed to the persons, to be summoned as additional accused, then nothing is required to summon them, as additional accused, in view of law laid down in Michael Machado and another Vs. Central Bureau of Investigation and another-2000 (1) RCR 691 (1), Maan Singh and others Vs. State of Punjab and another-2009 (2) RCR (Criminal) (SC), Suman Vs. State of Rajasthan and others 2010 (1) SC, 250 and Dharampal and others Vs. State of Haryana and others 2013 (3) RCR (Crl.) 787 SC. In the wake of above discussion, the findings rendered by the learned trial Court are hereby set aside and the revision petition, filed by the complainant is hereby allowed. The learned trial Court is directed to decide the matter afresh in view of the discussion, made herein above. File be consigned to the record room, after due compliance.”

Perusal of the above said order indicates that learned revisional Court has, after discussing the principles of law and referring to certain judgments, set aside the order passed by the trial Court and directed the trial Court to decide the matter afresh.

The learned revisional Court appears to have not made any attempt to either appreciate the testimony of complainant Net Ram in the light of parameters laid down in the judgments mentioned in the order and casually set aside the order. The order passed by the Additional Sessions Judge appears to be a casual approach without considering the facts and circumstances of the case in the light of the parameters laid down in the judgments referred. It is not understood as to how the judgment in

Dharampal and others Vs. State of Haryana and others 2013 (3) RCR (Criminal) 787 SC mentioned in the order passed by the revisional Court is applicable to an application under Section 319 Cr.P.C.

Notice of motion to the respondents for 17.02.2016.

Operation of the impugned order will remain stayed.”

It is submitted on behalf of the petitioners that after the investigation was completed and challan was submitted, the petitioners were kept in Column No.2 and after framing of charge against the 05 other co-accused, who are facing trial, statements of 02 witnesses i.e. PW1 – Hans Raj and PW3 – Net Ram was recorded by the trial Court. It is further submitted that from the statements of both the witnesses, no such evidence has come on record to primarily connect the petitioners with the offence as PW1 has not supported the prosecution case and PW3 in his cross-examination has stated that except Sunder, he cannot identify any other person. The trial Court on appreciation of statements of these two witnesses has rightly dismissed the application filed under Section 319 Cr.P.C. for summoning the petitioners as additional accused and the Appellate Court has not passed a well-reasoned order as noticed in the order dated 19.11.2015 passed by this Court.

On the other hand, counsel for the State opposed the prayer of the petitioners.

After hearing counsel for the parties and in view the above facts and circumstances, the present petition is allowed, the order dated 15.10.2015 passed by the Appellate Court is set-aside and the matter is remitted back to the Court of Additional Sessions Judge, Palwal for

deciding the same afresh in the light of observations made by this Court
in the order dated 19.11.2015.

(ARVIND SINGH SANGWAN)
JUDGE

21.08.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No