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

**CRR No.3394 of 2015 (O&M)**

**Date of decision: August 16, 2017**

Suresh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI**

**Present:** Mr. S.S. Gangas, Advocate for the petitioner.

Mr. Arjun Singh Yadav, AAG Haryana.

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**A.B. CHAUDHARI, J (Oral)**

Rule. Heard forthwith with the consent of the learned counsel for the rival parties.

This petition is directed against order dated 15.07.2015 by which the learned trial Court rejected the application under Section 319 of Code of Criminal Procedure, 1973 for summoning the additional accused in the trial.

Petition was filed on 04.09.2015 in this Court and remained pending. This Court, however, allowed the trial to go ahead and accordingly, learned counsel for the accused submitted that now the evidence has been recorded completely and the case is fixed for filing arguments and therefore, this Court need not exercise revisional power in the present matter.

I have perused the impugned order as well as crux to the deposition of PW1 before the Court. The trial Court's order qua Secretary alias Randhir son of Ram Kishan and Krishan son of Baljeet of village

Chulkana, Tehsil Samalkha, District Panipat will have to be upheld since the allegations against them is that they were standing at the spot. In so far as the accused Billa alias Narender son of Sat Narain, Birbal son of Ram Chander, Usha wife of Narender, Usha wife of Birbal, Rehman alias Arman son of Birbal are concerned, there is attribution against them and that has been described, which I quote hereunder for the purpose of brevity:-

*“Thereafter, I went to vegetable market Samalkha to bring my other son Vikas, then I alongwith my son Vikas came back to the barber shop of Birpal. Where we saw Billa alias Narinder son of Sat Narain caught hold the arm of my son Deepak, in other hand Billa having Donga (gun). Other person Birbal caught hold by son Deepak other arm, Usha w/o Narinder caught hold hair of my son Deepak, Usha w/o Birbal also caught hair of my son Deepak, Rahul, Rehman sons of Birpal were beating my son Deepak with dandas on his legs. In the meantime Birpal stabbed scissor in the abdomen of my son Deepak and he rotated the scissors (kanchi). I and my son Vikas raised alarm to save my son Deepak from the above named persons. In the meantime, my son Deepak became unconscious and was fell down. Secretary alias Randhir son of Ram Kishan and Krishan son of Baljeet of my Village having dandas in their hands were also standing at the spot.”*

Learned counsel for the accused submitted that all that is in the form of improvement and therefore, should not be relied upon. In my opinion, the attribution as quoted above is good enough to follow the ingredients of the judgment of the Hon'ble Supreme Court in the case of Harpal Singh and *prima facie* participation and unlawful assembly is clearly made out. The accused persons therefore, must face the trial in respect of the result of the trial. The evidence as quoted above is good

enough to try them in the pending trial. The submission that the same is by way of improvement cannot be accepted at this stage, since it is the matter of assessment of evidence upon hearing both the sides and the settled principles regarding appreciation of evidence under Section 3 of the Evidence Act. In that view of the matter, I am inclined to allow the application that was filed before the trial Court in respect of above persons only and reject the application in so far as the Secretary alias Randhir son of Ram Kishan and Krishan son of Baljeet are concerned. In the result, following order is passed:-

**ORDER**

- (i) Petition is partly allowed;
- (ii) Application under Section 319 Cr. P.C. filed by the petitioner qua Billa alias Narender son of Sat Narain, Birbal son of Ram Chander, Usha wife of Narender, Usha wife of Birbal, Rehman alias Arman son of Birbal, is allowed and they shall be summoned and shall also be admitted to bail by the trial Court to its satisfaction;
- (iii) In so far as submission about the stage of the trial is concerned, the same does not impress me since the order can always be passed under Section 319 Cr. P.C. provided there is evidence against such additional accused proposed;
- (iv) Observations made hereinabove are for this present petition only and would not influence the trial Court while deciding trial.

**(A.B. CHAUDHARI)**  
**JUDGE**

**August 16, 2017**  
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No