

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

CRR-3807 of 2015

Date of decision: 10.8.2017

Sanjeev

...Petitioner

Versus

Tejan and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajesh Lamba, Advocate
for the petitioner.

Mr.K.S. Dadwal, Advocate
for the respondents.

H.S. MADAAN, J.

This revision petition is directed against the order dated 6.7.2015 passed by the Court of learned Additional Sessions Judge, Palwal vide which application under Section 319 Cr.P.C. for summoning of three accused, namely, Tejan, Babli and Kumar as additional accused was dismissed.

Briefly stated, facts of the case as per prosecution story are that FIR No.3 dated 3.1.2015 for offences under Sections 148, 149, 302 IPC and Section 25 of the Arms Act was registered with Police Station Sadar, Palwal on the basis of statement of complainant – Sanjeev, a driver by profession and resident of village Dudhola, who stated that on the fateful day, he along with deceased Raj Kumar @ Rajesh was sitting in village Chopal; that at about 6:00 p.m., accused Kalan @ Deshveer along

with Tejan, Babli and Kumar, all residents of his village accompanied by 3-4 unknown persons having muffled faces came there; that Tejan, Babli and Kumar caught hold of deceased by hand whereas Kalan @ Deshveer having knife stabbed the deceased on left side of the chest; that thereafter, such accused gave several other blows of knife which hit deceased on left palm; that deceased fell on the ground and while being taken to the hospital, he died on the way. The motive for the incident was that deceased had named the accused in a theft case. The matter was investigated. Accused Deshveer @ Kalan was arrested. He got recovered weapon of offence used by him in the incident. After completion of investigation, challan against him was prepared and filed in the Court.

During the trial, the prosecution moved an application under Section 319 Cr.P.C. for summoning of three accused, namely, Tejan, Babli and Kumar, however, that application was dismissed by the trial Court.

Feeling aggrieved, the complainant has filed the present revision petition, notice thereof was given to the respondents.

During pendency of the revision petition, trial against accused Deshveer @ Kalan was concluded and he was convicted by the Court of learned Additional Sessions Judge, Palwal vide judgment dated 8.12.2016 and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.20,000/- for offence under Section 302 IPC.

Now the question arises as to whether after conclusion of trial, the present revision petition can survive or not. Learned counsel for the revision – petitioner has submitted that the revision petition would

continue and this Court can adjudicate the legality and validity of the order dismissing application under Section 319 Cr.P.C. In support of his contention, he has referred to citation **Arshida Versus State of Haryana and others, 2014(1) R.C.R.(Criminal)946** by a Co-ordinate Bench of this Court, wherein it was observed that when application under Section 319 Cr.P.C. was moved during pendency of the trial and the main case was decided, it would be deemed to have been allowed during the pendency of the trial and not after its conclusion. It was observed that the contention that by the decision of the main case, the application under Section 319 Cr.P.C. will become infructuous is not tenable.

On the other hand, learned counsel for the respondents has contended that the purpose of allowing application under Section 319 Cr.P.C. is to summon the person(s) not challaned by the police to face trial along with the accused booked by the police on the allegations of having committed some offence and once the trial is over, the application under Section 319 Cr.P.C. cannot survive since person(s) to be summoned cannot possibly be tried along with the main accused during the trial. In support of his said contention, learned counsel for the respondents has referred to authority **Rakesh Kumar Versus State of Haryana and others, 2013(3) R.C.R.(Criminal) 913** by another Co-ordinate Bench of this Court, wherein it was observed that when application under Section 319 Cr.P.C. to summon additional accused was dismissed and revision petition against the said order was filed in the trial Court, however, in the meantime main case has been decided by the trial Court and two of the accused were convicted and one was acquitted. In the circumstances,

revision for summoning the additional accused was dismissed holding that no person can legally be summoned as an additional accused to face the trial along with the other co-accused under Section 319 Cr.P.C. after the conclusion of the trial of the main case. In that authority, Hon'ble Apex Court judgment **Rajendra Singh Versus State of U.P. & Anr., 2007(3) RCR(Criminal) 1022** was discussed, however, it was distinguished holding that as per facts of that authority, an additional accused stood already summoned under Section 319 Cr.P.C. before the conclusion of trial and it was on the peculiar facts and in said circumstances of that case, it was observed that the fact trial of co-accused had concluded and co-accused was acquitted cannot have the effect of nullifying the order of summoning of the additional accused under Section 319 Cr.P.C.

After hearing the rival contentions and going through the authorities referred to by learned counsel for the parties, I find that the authority ***Rakesh Kumar Versus State of Haryana*** and others referred supra by learned counsel for the respondents finds application to the facts of this case and that the authority ***Arshida Versus State of Haryana and others*** cited supra by learned counsel for the petitioner does not find application due to different facts and circumstances. In this case also, the additional accused had not been summoned by the trial Court and rather application in that regard was dismissed. Though that order was challenged in the revision petition but during pendency thereof, the trial against main accused has got concluded and he has been convicted and sentenced for offence under Section 302 IPC.

Therefore, revision petition challenging that order cannot

survive and is dismissed accordingly.

10.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No