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

CRR-308-2019(O&M)
Date of Decision: 04.02.2019

Daya Chand and another

...Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Diepa Singh, Advocate
for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this petition, order dated 15.12.2018 of the Additional Sessions Judge, Gurugram remanding the case to the trial Magistrate for procuring the presence of all the accused and passing appropriate orders in accordance with law.

In nutshell, the petitioners were booked under Sections 307, 201, 120-B, 34 IPC and Section 25 of the Arms Act, 1959 on the basis of suspicion that on 07.06.2018, the petitioners along with 8-10 persons attacked complainant-Dinesh Kumar in order to kill him.

During investigation complainant made a statement that he had named the petitioners on the basis of suspicion, but later on, found that they were not involved in that attack.

Consequently, the petitioners moved an application before the concerned Illaqa/Area Magistrate for their discharge. In response to their application, police submitted its report. Surender Singh, Investigating officer made a specific statement before SDM, Pataudi that he has no objection in case accused are discharged. Consequently, vide order dated 09.07.2018 both the petitioners were ordered to be released from judicial custody with direction to the aforesaid Investigating officer to file a cancellation report against them. Since the offences were triable by Court of Sessions, therefore, trial Magistrate remitted the case to the Court of Sessions; Accordingly, the case was assigned to Additional Session Judge, Gurugram for trial who, at the time of hearing, passed the impugned order relying on the contention of the learned public prosecutor, remanded the case to the learned Magistrate with direction to procure the presence of both the petitioners.

Heard.

As on date, there is nothing on record against the petitioners. The Investigating officer has raised no objection in discharge of the petitioners before the Sub Divisional Magistrate, Pataudi. Therefore, in the considered opinion of this Court, the Additional Sessions Judge should not have remanded the case back to the Area Magistrate to procure the presence of both petitioners, who can very well be summoned at

a later stage, under relevant provisions of law, after framing charges against their co-accused at relevant stage during trial, if required, inasmuch as the trial Court cannot force the presence of the petitioners who are neither required by the police, nor by any Court for launching prosecution against them.

In view of the above discussion, the impugned order is set aside. The Additional Sessions Judge shall proceed in accordance with law.

Disposed of.

4th February, 2019

shabha

**[RAMENDRA JAIN]
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No