

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

(i) CRR No.2693 of 2015 (O&M)

Inderjit and others

...Petitioners

VERSUS

State of Haryana

...Respondent

(ii) CRR No.3462 of 2015 (O&M)

Bhushan and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

Date of Decision: January 31, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bipan Ghai, Senior Advocate with
Mr.Deepanshu Mehta, Advocate
for the petitioner (in CRR No.2693 of 2015).

Mr.Birender Singh Rana, Senior Advocate with
Ms.Divya Bajaj, Advocate and
Mr.Ajay Aggarwal, Advocate for
Mr.Denesh Goyal, Advocate
for the petitioner (in CRR No.3462 of 2015).

Mr.Tanuj Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected
revisions as the point for determination in both the cases is the same.

Petitioners Inderjit, Partap and Dharamvir have filed CRR

No.2693 of 2015 and petitioners Bhushan and Sikander have filed CRR No.3462 of 2015 against State of Haryana and Dwarka, challenging the impugned order dated 23.07.2015 passed by learned Addl. Sessions Judge, Palwal, vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioners as additional accused has been allowed.

Notice of motion was issued. Learned State counsel appeared and contested the petitions.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

The perusal of the record shows that challan has been presented by police of Police Station Hodal in case FIR No.392/2014 under Section 302 IPC and Section 25 of the Arms Act against accused Manoj. An application has been filed before the trial Court by the prosecution under Section 319 Cr.P.C. for summoning Bhushan, Sikandar, Arjun, Harender @ Haro, Inderjeet, Dharambhir, Partap, Chiku @ Sunil and Suresh as additional accused. It is stated in the application that these persons have been named in the FIR and also in the statement of Dwarka given in the Court and specific role has been attributed to them. Learned trial court, vide impugned order dated 23.07.2015 summoned above-said persons to face trial along with the accused already facing the trial.

The perusal of the record furthers shows that Harender @ Harro, Chiku @ Sunil and Suresh have not been declared innocent by the police during investigation, rather, they could not be apprehended and proceedings under Section 82 Cr.P.C. are in process. The Court has ample

powers under Section 319 Cr.P.C. to summon additional accused, who have

not been challaned or have been found innocent during investigation, to face trial along with accused already challaned. If some of the petitioners could not be apprehended and challan has not been presented, even then, the Court has power to summoned them under Section 319 Cr.P.C. on the basis of evidence produced before it.

Further, the perusal of the FIR shows that these persons have been named and specific role has been attributed to them. In the statement also, complainant Dwarka has deposed regarding same facts.

Learned counsel for the petitioners argued that in the statement under Section 161 Cr.P.C., father of the deceased and other witnesses, some of the petitioners have not been named and therefore, the impugned order is illegal. On this argument, I find that at the time of summoning additional accused under Section 319 Cr.P.C., the Court is to see the evidence produced before it and at this stage, the statements under Section 161 Cr.P.C. are not to be seen because statement under Section 161 Cr.P.C. is inadmissible evidence. Dwarka is eye witness to the occurrence and first version given by him names all the accused persons along with specific roles and enmity also.

From the record, I find that as per post-mortem examination report, multiple fractures and injuries were found on the dead body. Therefore, at this stage, there is evidence showing more than prima facie case against the persons who have been summoned as additional accused to face trial along with the accused already challaned. It appears to the Court that additional accused so summoned are also involved in the commission of the offence and they should face trial along with accused already challaned.

In view of the above discussion, I find that no illegality has

been committed by learned Addl. Sessions Judge, Palwal, while passing the impugned order dated 23.07.2015.

Therefore, finding no merit in both the revision petitions, the same are dismissed.

January 31, 2019
Vgulati

Whether speaking/reasoned
Whether reportable

(INDERJIT SINGH)
JUDGE

Yes
No