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

CRM-M-30706-2024 (O&M)

Reserved on :20.09.2024

Pronounced on: 19.10.2024

Kanwal Singh

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Aashna Gill, Advocate, for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

KIRTI SINGH, J.

The jurisdiction of this Court has been invoked under Section 482 of Cr.P.C. seeking quashing of the order dated 02.03.2024 (Annexure P1) passed by the learned Additional Sessions Judge, Sonapat summoning the petitioner as an additional accused under Section 319 Cr.P.C. and directing separate trial to be initiated against him in case FIR No.104 dated 11.03.2016, under Sections 148, 307, 302, 333, 353 & 149 IPC and Section 25 of the Arms Act, 1959, registered at Police Station Ganaur, Sonapat, Haryana.

2. Succinct factual narrative relevant for the disposal of the instant petition is that on 11.03.2016 at about 6.30 p.m, a telephonic information was received from the Community Health Centre (CHC),

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Ganaur that Vikas @ Dudhia had been brought dead in the said hospital after sustaining bullet injuries and the police officials rushed to the premises of said hospital. After reaching CHC, Ganaur, police officials obtained doctor's ruqa and medico-legal report of Bhoop Singh (Constable) wherein the doctor concerned had recorded two fire-arm injuries. The cousin of deceased Vikas @ Dudhia namely, Vedpal met the police officials and presented a complaint stating therein that Vikas @ Dudhia (deceased) was his cousin and on that day i.e. 11.03.2016 at about 4.00 p.m, information was received that Vikas @ Dudhia had been shot dead in the Court at Ganaur, upon which he reached CHC, Ganaur where dead body of his cousin-Vikas @ Dudhia was found. The complainant further stated that one Ajay met him and disclosed that murder of his brother-Vikas @ Dudhia had been committed by Gaurav @ Meeta and Rupender @ Nanha who have been nabbed by police from the spot itself who disclosed that at the time of occurrence they were being accompanied by Ravi, Ajay, Yashbir and Rahul and they committed murder on the asking/instigation of Sandeep Barwasani. The complainant further stated that for the last two days when his brother-Vikas @ Dudhia was in police custody, some unknown persons travelling in car bearing registration No.HR-10X-4444 were a keeping watch on his brother. He further stated that on 09.03.2016, when he had gone to meet his brother in the Court at Sonipat, Vikas @ Dudhia had told him that Sandeep and his brother, Guard Incharge-Inspector Kawal Singh, ASI-Bhagat Singh, Anil

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Bhatgaon, and Ram Karan, would kill him or would have him murdered and Vikas @ Dudhia requested him (the complainant) to move an application for increasing his security. The complainant further stated that at that time wife of Vikas @ Dudhia namely, Smt. Savita was also accompanying him in the Court at Sonipat. With these allegations, the complainant sought for legal action against the culprits. On the basis of above mentioned complaint, present FIR was registered and investigation was set into motion.

2.1 The investigation of the case was undertaken and final report under Section 173 Cr.P.C. was submitted in the Court against the co-accused Gaurav and Rupender on 07.06.2016. Further, a supplementary challan was filed against accused Sumit on 04.10.2016.

2.2 The departmental enquiry proceedings were undertaken against the present petitioner due to the allegations made against him and ASI Bhagat Singh and enquiry report dated 26.10.2016 was submitted by the DSP Headquarters, Sonipat whereupon order dated 02.11.2016 was passed by the Inspector General of Police, Haryana filing the enquiry against the petitioner and ASI Bhagat Singh while agreeing with the enquiry report finding no involvement of the petitioner or ASI Bhagat Singh in the present incident.

2.3 The trial against co-accused namely, Rupender, Sumit Yashbir Ajay @ Bittu and Gaurav commenced before the learned Sessions Court, Sonipat.

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2.4 An application for summoning the petitioner and ASI Bhagat Singh as an accused under Section 193 Cr.P.C. was filed by the complainant before the trial Court in the year 2016 itself wherein, order dated 04.11.2016 was passed by the Additional Sessions Judge, Sonipat dismissing the said application as there was no *prima facie* material available on record which could connect the petitioner and ASI Bhagat Singh with the commission of offence of murder of the deceased.

2.5 The trial commenced and on 05.09.2023 after completion of the prosecution evidence by examining as many as 43 prosecution witnesses, the Public Prosecutor for the State of Haryana closed prosecution evidence and statements of the accused under Section 313 Cr.P.C. were recorded. Thereafter, the case was kept for defence evidence. On 29.11.2023 when the case was fixed for defence evidence, the public prosecutor brought to the notice of the learned trial Court, a miscellaneous application under Section 319 Cr.P.C. which was pending and the case was adjourned for arguments on the said application.

2.6 Thereafter, on 02.03.2024, the impugned order summoning the petitioner as an additional accused was passed and the Public Prosecutor voluntarily suffered a statement in the Court that he did not press the application qua ASI Bhagat Singh and Ravinder (brother of Sandeep Barswani).

2.7 The petitioner apprehending his arrest approached the Sessions Court, Sonapat seeking grant of pre-arrest bail which was

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declined vide order dated 12.03.2024. Subsequently, the petitioner approached this Court vide CRM-M-14297-2024 and the anticipatory petition was dismissed vide order dated 15.05.2024. Against this dismissal, the petitioner filed a Special Leave to Appeal (Criminal) No.8886-2024 before the Hon'ble Supreme Court of India which has been dismissed vide order dated 14.10.2024.

Submissions made by learned counsel for the petitioner:-

3. Learned counsel for the petitioner has vehemently argued that that the petitioner has been exonerated multiple times by the investigating agency on the basis of a polygraph test conducted during the course of investigation. This conclusion was strongly supported not only by the findings of the regular departmental enquiry but also in the enquiry proceedings under Section 176 Cr.P.C. Despite this, the impugned order was passed erroneously without appreciating that the petitioner was not involved in the the commission of the present crime. It has also been argued that application under Section 319 Cr.P.C. was filed in July, 2018, after a delay of 05 years, during which, the prosecution evidence was completed with the examination of 43 witnesses.

Submissions made by learned State counsel:-

4. On the other hand, learned State counsel has argued that the order dated 02.03.2014 allowing the application under Section 319 Cr.P.C. was passed by the learned trial Court after considering the entire facts and circumstances of the case and arriving to a conclusion that a

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very strong *prima facie* case was established against the petitioner. The Court found that the petitioner could be held liable to face trial as an additional accused for the commission of crime punishable under Section 120-B read with Section 302 IPC.

He further argued that the order was passed by the learned trial Court after appreciating and evaluating the material and evidence on record and in view of the seriousness of the offence.

5. Heard the rival submissions made by the learned counsel for the parties and perused the relevant record with the able assistance of the counsels.

Analysis & conclusion

6. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of enquiry or trial has been discussed and summarized after reviewing the various precedents by the Hon'ble Supreme Court in **Manjeet Singh Vs. State of Haryana and others 2021(4)RCR (Criminal)**. The relevant extract of the judgment passed is reproduced as below:-

*“12.1 While considering the rival submissions the law on the scope and ambit of [Section 319 CrPC](#) is required to be considered. In the recent decision in the case of [Sartaj Singh](#) (Supra) this very Bench has considered in detail the law on the scope and ambit of [Section 319 CrPC](#). In the said decision this court considered the decisions in the cases of [Hardeep Singh](#) (Supra); *S. Mohammed Ispahani v. Yogendra Chandak* (Supra) and *Rajesh* (Supra) in detail. The*

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relevant part of the aforesaid decisions which came to be considered by this Court are as under:

“6.1.1 In [Hardeep Singh](#) (supra), this Court had an occasion to consider in detail the scope and ambit of the powers of the Magistrate under [Section 319 CrPC](#), the object and purpose of [Section 319 CrPC](#) etc. It is observed in [the said decision](#) that the entire effort is not to allow the real perpetrator of an offence to get away unpunished. It is observed that this is also a part of fair trial and in order to achieve this very end that the legislature thought of incorporating the provisions of [Section 319 CrPC](#). It is further observed that for the empowerment of the courts to ensure that the criminal administration of justice works properly, the law has been appropriately codified and modified by the legislature under the [CrPC](#) indicating as to how the Courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law. It is also observed that it is the duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.”

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to

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complicity of some other person who may be connected with the offence.

90. As held in ***Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899]*** and *Harbhajan Singh [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135]*, all that is required for the exercise of the power under ***Section 319 Cr.P.C*** is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under ***Section 319 Cr.P.C*** and can proceed against such other person(s). It is essential to note that the section also uses the words “such person could be tried” instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of ***Section 319 Cr.P.C***, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

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Therefore, even on the basis of examination-in- chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

6.3 In [S. Mohammed Ispahani v. Yogendra Chandak](#) (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

“35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of [Section 319](#) CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.” 6.4 In the case of [Rajesh v. State of Haryana](#) (2019) 6 SCC 368, after considering the observations made by this Court in [Hardeep Singh](#) (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the

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trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, [in that case](#) also, the Court is still not powerless by virtue of [Section 319](#) CrPC and even those persons named in FIR but not implicated in charge- sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.”

13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under [Section 319](#) Cr.P.C can be summarized as under:

(i) That while exercising the powers under [Section 319](#) CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the [CrPC](#) indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) [Section 319](#) CrPC allows the court to proceed against any person who is not an accused in a case before it;

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(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) [Section 319](#) Cr.P.C is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under [Section 319\(1\)](#) Cr.P.C can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of [Sections 207/208](#) Cr.P.C, committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under [Section 319](#) Cr.P.C only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in [Section 319](#) Cr.P.C means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under [Section 319](#) Cr.P.C is to be exercised and not on the basis of material collected during the investigation;

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(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under [Section 319 Cr.P.C](#) and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under [Section 319 Cr.P.C](#) can be exercised;

(xv) that power under [Section 319 Cr.P.C](#) can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, [in that case](#) also, the Court is still not powerless by virtue of [Section 319 Cr.P.C](#) and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses); (xvii) while exercising the powers under [Section 319 CrPC](#) the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

14.5 Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and

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order passed by the High Court there is a much progress in the trial and therefore at this stage power under [Section 319](#) Cr.P.C may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled preposition of law and as observed by this Court in the case of [Hardeep Singh](#) (Supra), the powers under [Section 319](#) Cr.P.C can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under [Section 319](#) Cr.P.C was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going on, application under [Section 319](#) Cr.P.C was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under [Section 319](#) Cr.P.C can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

7. Thus, it is evident that the power under Section 319 Cr.P.C. can be exercised at any stage after the charge-sheet is filed before the pronouncement of the order.

8. It would now be apposite to refer to the observations made by the learned trial Court while allowing the application under Section 319 Cr.P.C. The relevant part of the observations made be read as under:-

“8. It is further made clear that during investigation, suspects Inspector Kanwal Singh was interrogated time and

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again by different in Rank of DSP on 02.05.2016, 22.05.2016, 02.06.2017, 29.07.2017, 09.09.2017 and 28.10.2018 and thereafter, polygraph test was also conducted on 01.02.2018 and 09.02.2018 and pursuant to that polygraph tests, their names were kept in Khana no.2, ignoring the direct evidence collected during investigation from the mouth of complainant vedpal and Savita, before whom, under trial had disclosed about threat of his murder by Sandeep Barwasni after hatching criminal conspiracy with inspector Kanwal Singh etc. However, PW-1 Rampal, PW-2 Vedpal (complainant), PW-7 Satender, PW-8 Savita and PW-30 Ajay have categorically stated in their testimonies about hatching criminal conspiracy by Kanwal Singh Inspector in connivence with Sandeep Barwansi behind murder of Vikas alias Doodiya, during police custody in court complex Ganaur and he was also seen outside the court complex at the time of commission of crime. Although, name of ASI Bhagat Singh was also mentioned, but he was being subordinate and he had to follow the directions of Inspector Kanwal Singh and so, ASI Bhagat Singh was rightly not entangled while withdrawing this application qua him.

9. It has come in evidence that Inspector Kanwal Singh was friend of Sandeep Barwansi who in connivance with each other after hatching criminal conspiracy, with prime accused, committed murder of under trial Vikas alias Doodiya, in presence of police officials in seven number as reflected their statement in the inquiry report prepared under section 176 Cr.P.C. After incident, two accused were apprehended/nabbed at spot rest of assailants had sped. Needless to state that polygraph test is not a conclusive perfect science to culminate innocence. It is pertinent to

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mention here that without leaking or sneaking information through police official about production of under trial Vinod Dudhia in court of SDJM, Ganaur, murder of under trial during custody of police and presence of Kanwal singh outside the court complex in fortuner Car at the time of incident. Still further, under trial had disclosed as on 9.3.2016 about threat qua apprehension of his murder from the hands of Sandeep Barwasni inconvenience with inspector Kanwal Singh, who never remained member as police team, but behind the commission of crime to eliminate under trial Vinod.

10. It may not be out place to mention here that since it was a case of custody death during police custody, therefore, inquiry under section 176 Cr.P.C was conducted by then Judicial Magistrate Ist class and during inquiry, statements of many witnesses were recorded. The inquiry report dated 06.05.2019, would reveal that statements of Vedpal, Savita, Dharamvir and many police officials were recorded and in their statements, complainant Vedpal and Savita (wife of Vikas alias Doodiya) had levelled allegations about threat extended to Vikas alias Doodiya by Kanwal Singh and Vikas also stated to his wife Savita during jail meeting that Inspector Kanwal Singh in collusion with Sandeep Barwasni, could murder him in an encounter and complainant also stated on similar lines. There was direct substantial piece of evidence before 10, but without considering substantial piece of evidence, the entire investigation was concluded qua Inspector Kanwal Singh on the basis of polygraph test though, question of hatching criminal conspiracy by Inspector Kanwal Singh with Sandeep

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Barwaani behind murder of Vikas allas Dadia was well established in their evidence.

11. It may safely be gathered from the evidence collected during Investigation that investigating officer with an ulterior motive had tried to save the skin of Inspector Kanwal Singh etc. though his role relating to hatched criminal conspiracy was surfaced in the investigation. It is quite settled preposition of law that accused cannot be exonerated merely on the basis of scientific evidence like polygraph report as a threshold by investigating officer, rather, it was is incumbent upon investigating agency to consider the substantial or ocular piece of evidence from the mouth of star/key/eye witness, who were well acquainted the manner, in which, incident took place. Apparently, investigating officer had overlooked the substantial piece of allegations levelled by complainant corroborated with material piece of evidence, against all six accused Rupender, Gaurav, Sumit, Yashvir, Ajay alias Bittu and Inspector Kanwal Singh, who were present at the time of commission of crime. In Hardeep Singh's case (supra) it has been observed that Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases, where the circumstances of the case so warrant. It is not to be exercised, because, the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner. Thus, we hold that though only a prima facie case is to be established nom the evidence led before the court not necessarily tested

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on the anvil of Cross Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one, which is more than prima facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.PC. In Section 319 Cr.PC. the purpose of providing if it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which, such person could be tried together with the accused." The words used are not "for which, such person could be convicted. There is, therefore, no scope for the Court acting under Section 319 Cr.PC to form any opinion as to the guilt of the accused.

12. Looking into entire facts and circumstances, this Court finds a Very strong prima facie case in hand against the person namely Inspector Kanwal Singh, who may safely liable to face trial as additional accused separately, for the commission of crime punishable under sections 120-B read with Section 302 IPC, by invoking provision under section 319 Criminal Procedure Code, respectively. Accordingly, present application is hereby allowed. It may not be out of place to mention here that trial other accused in main file at the stage of defence evidence and so their trial may be concluded as early as possible. Let, presence of additional accused Inspector Kanwal Singh be secured by segregating his file from main file, so that, his trial as additional accused may be commenced separately. However, it is made clear that nothing observed in this order shall be misconstrued at the time of merit of the case."

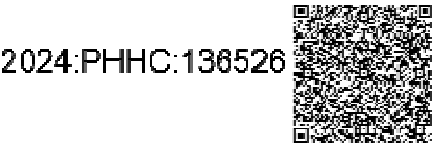
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9. In the light of the aforesaid legal position when the facts of the present case are analyzed, it is found that the learned trial Court has rightly come to the conclusion that there is more than *prima facie* against the petitioner so as to face trial as an additional accused under Section 319 Cr.P.C.

10. It is observed that the petitioner has been specifically named in the FIR. The statements of Vedpal (PW-2) and Savita (PW-8, wife of the deceased) were recorded and during the enquiry and course of the trial, both had categorically stated about the threat extended to Vikas @ Dudhia by Inspector Kanwal Singh (the petitioner) in connivance with co-accused Sandeep Barwasni. The under trial Vikas @ Dudhia (deceased) had also disclosed to his wife and brother that there was an apprehension that the Inspector Kanwal Singh (petitioner) in collusion with co-accused Sandeep Barwasni could murder him in an encounter.

11. With regard to the exoneration in departmental proceedings, it is well settled proposition that civil & criminal proceedings are not on the same footing. The nature and evidence and the standing of proof required in a criminal case are significantly different from those required in departmental proceedings. Therefore, exoneration in departmental proceedings does not automatically absolve the petitioner from the liability in a criminal trial as both proceedings have distant legal threshold and objectives. There is neither any statutory provision nor any legal



principal that finding recorded in one proceeding may be treated as binding in the other.

12. Having regard to the entire discussion as above, this Court finds no illegality in the impugned order dated 02.03.2024 (Annexure P1) passed by the learned Additional Sessions Judge, Sonapat summoning the petitioner as an additional accused under Section 319 Cr.P.C in case FIR No.104 dated 11.03.2016, under Sections 148, 307, 302, 333, 353 and 149 of IPC and Section 25 of the Arms Act, 1959, registered at Police Station Ganaur, District Sonapat.

13. Accordingly, this petition is dismissed.

14. It is made clear that the observations made herein by this Court should not influence the learned trial Court while disposing of the case on merits.

Pending miscellaneous application(s), if any, also stands disposed of.

19.10.2024
Ramandeep Singh

(KIRTI SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable	Yes