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

CRR-2514-2023

Date of decision : 03.11.2025

**ABHISHEK KAMBOJ @ SHAKA @ ABHISHEK KUMAR &
OTHERS**

... Petitioners

Versus

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Keshav Pratap Singh, Advocate with
Mr. Rajat Singh, Advocate
Mr. Ekteshwar Sidhu, Advocate and
Mr. Bharat Singh, Advocate
for the petitioner.

Mr. T.P. Singh, Sr. DAG, Haryana.

Mr. Aditya Partap, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition is for setting aside the order dated 22.09.2023 passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhari whereby the application moved by the complainant under Section 319 Cr.P.C. to summon the petitioners has been allowed.

2. The brief facts of the case are that an FIR No.139 dated 01.07.2021 U/s 148, 149, 302 IPC P.S. Buria, District Yamuna Nagar came to be registered at the instance of Chand S/o Nasir Hasan and the same reads as under:-

“Contents of the writing are as under- Statement of Chand son of Nasir Hasan, caste Siddki Musalman, resident of Gagdan Mohalla, Buria, Police Station Buria, District Yamuna Nagar,



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aged 36 years, Mobile No.7027470786. It is stated that I am resident of the aforesaid address and do driver's job. We are 9 brothers and sisters and our 5th number brother whose name is Shadab, who is aged about 28 years. My brother used to run a Readymade cloth shop in Buria. Today he had gone to village Amadalpur for some work. At about 08.30 P.M, I received a call on my phone from Pintu Rana, resident of Amadalpur, friend of my brother Shadab that 10/12 boys after causing injuries to your brother Shadab on the bridge of Amadalpur, had fled away. On receipt of this phone, I and my elder brothers Tajim, Mausin and Rijwan reached in village Amadalpur to my brother. There the villagers had already called Ambulance at the spot. We all three brothers after taking my brother Shadab, who had suffered many injuries, in the Ambulance went in Civil Hospital, Yamuna Nagar, where the Doctor Sahab after giving him first aid, keeping in view very serious condition of my brother, had referred him to PGI SEC-32, Chandigarh. When we after taking our brother from Civil Hospital, Yamuna Nagar, started for PGI SEC-32, Chandigarh, in the way his condition was badly deteriorated and we got our brother Shabad admitted in Gaba Hospital, Yamuna Nagar, where my brother Shadab had expired during his treatment on account of the injuries suffered in the quarrel. I came to know on Amadalpur Bridge, keeping old revenge with my brother Shadab, Abhishek Kamboj alias Shakar, resident of Mali Majra, Sonu Gujjar son of Satpal, Bilal son of Matlub, Usman son of Waqil,, residents of Buria, Charanjit Rana, resident of Bhogpur and Abid resident of Punnabhatti and Monti resident of Mali Majra, have caused injuries and on account of these injuries my brother Shadab has expired. Alongwith them there were 10/12 other boys of unknown names and address. Legal action may be taken against all of them. SD CHAND.”

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3. Based on the investigation conducted, two challans were submitted against 7 persons namely, Mohit, Shaban Khan, Sachin Saini, Mohd. Wasim Akram, Mohd. Suleman @ Intzar, Mohd. Arif and Kapil. The petitioners were found to be innocent and placed in column No.2.

4. During the course of the trial, the complainant/Chand was examined as PW1. Thereafter, an application under Section 319 Cr.P.C. was moved to summon the petitioners.

5. The aforementioned application was allowed and the petitioners were ordered to be summoned to face as additional accused under Section 319 Cr.P.C. vide order dated 22.09.2023 passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhri.

6. It is this order dated 22.09.2023 which is under challenge in the present petition.

7. The learned counsel for the petitioners contends that the FIR came to be registered at the instance of Chand who stated that one Pintu Rana had called him up and told him that 10-12 boys after causing injuries to his brother Shadab had fled away. He (complainant) and his two brothers had gone to the place of occurrence and had taken their brother first to Civil Hospital, Yamuna Nagar thereafter to the PGI, Govt. Hospital, Sector 32, Chandigarh where Shadab had succumbed to his injuries. The complainant had come to know that it was the petitioners along with others who had caused injuries to his brother. Apparently, the complainant was not a witness to the occurrence. Pintu Rana who had made a telephonic call to him (complainant) was never cited as a

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prosecution witness. Later, during the course of the trial, the complainant had improved his version and had stated that while he was taking his brother Shadab to the Hospital his brother had suffered an oral dying declaration naming the petitioners along with the others as having assaulted him (deceased) due to an old enmity. He contends that had the deceased made a such oral dying declaration to the complainant, the same would have been the basis of the FIR. In fact, on the basis of technical evidence the Investigating Agency has categorically found that the petitioners were not present at the spot. He therefore contends that the improved statement made by the complainant while deposing as PW1 cannot be the basis for summoning of the petitioners in the absence of any other evidence. He thus contends that the impugned order dated 23.09.2023 is liable to be set aside.

8. On the other hand, the learned State counsel along with the learned counsel for respondent No.2 contend that the petitioners were exonerated only on the basis of phone records as per which some of the petitioners were not present at the spot. As per the law laid down in the case of **Omi @ Omkar Rathore & another Vs. The State of Madhya Pradesh & another, Special Leave Petition (CRL.) No.17781 of 2024**, a person who has not been challaned can be summoned to face trial under Section 319 Cr.P.C. as an additional accused. As the petitioners have been duly named in the deposition of the complainant as per which the deceased had suffered an oral dying declaration before him (complainant) that the petitioners along with the others had caused



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injuries to him, the petitioners have been rightly summoned to face trial as additional accused. Therefore, the present petition is liable to be dismissed.

9. I have heard the learned counsel for the parties at length.

10. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 319 Cr.P.C.

Section 319 Cr.P.C, reads ad under:-

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the

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offence upon which the inquiry or trial was commenced.”

11. Coming back to the facts of the present case, admittedly, the complainant-Chand is not an eye-witness. He came to the spot at the asking of Pintu Rana and found his brother lying injured. He along with his brothers took their deceased brother to the Hospital at Chandigarh and on the way he succumbed to his injuries. The petitioners were named only on suspicion. On the conclusion of the investigation the report under Section 173(2) Cr.P.C. were submitted against 7 persons whereas the petitioners were declared to be innocent. Later, the complainant was examined as PW1 wherein he improved his version to say that the deceased had made an oral dying declaration before him disclosing the name of the petitioners and others as having assaulted him on account of old enmity. Apparently, the version of the complainant-Chand while deposing as PW1 is a highly exaggerated version. Had this oral dying declaration been made by the deceased to the complainant, the same would have found mention in the FIR itself.

12. In the instant case, it cannot be said that there is strong and cogent evidence available against the petitioners for which they ought to face trial as additional accused along with those accused who are already facing trial. In fact, the power to summon a person as an additional accused under Section 319 Cr.P.C. cannot be exercise in a causal and cavalier manner and there must be more than *prima facie* evidence to summon prospective accused which is lacking in the instant case.

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13. The judgment in **Omi @ Omkar Rathore** (supra) does not further the case of the complainant in any manner as it has only reiterated the legal position as regards the quality of evidence required to summon an accused under Section 319 Cr.P.C.

14. Keeping in view the aforementioned facts and circumstances, I find considerable merit in the present petition and therefore, the impugned order dated 22.09.2023 passed by the Addl. Sessions Judge, Yamuna Nagar at Jagadhari and all consequential proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

03.11.2025
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No