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*Before Satish Kumar Mittal, J.*

ISHAM SINGH AND OTHERS,—*Petitioners*

*versus*

STATE OF HARYANA,—*Respondent*

*Cr. R. No. 143 of 2004*

20th February, 2004

*Code of Criminal Procedure, 1973—S. 319—FIR registered against accused including the petitioners—On investigation police finding petitioners not involved in crime—No challan filed against petitioners—On an application under section 319 Cr. P. C. filed by complainant, trial court summoning petitioners to face trial as additional accused—Challenge thereto—Evidence led by prosecution does not connect petitioners with commission of crime—Merely because complainant has named the petitioner by attributing specific injuries to them it cannot be inferred involvement of the petitioners in the crime—Orders of trial Court summoning petitioners liable to be set aside.*

*Held*, that the evidence produced by the prosecution during the trial is not enough to frame an opinion that the petitioners have committed the alleged offence. Merely because the complainant while appearing as PW 3 has named the petitioners by attributing specific injuries to them, it cannot be inferred that the petitioners were involved in the crime particularly when this version of the complainant was an improvement on his earlier written version and the fact that there was an enmity between the parties. The case in hand was not the case where the trial Court should have exercised its discretionary power to summon the petitioners as an additional accused particularly in view of the feeble evidence led by the prosecution which does not connect the petitioners with the commission of the crime. Summoning of the petitioners as an additional accused will not achieve any criminal justice. Rather, it will be abuse of the process of the Court to entangle the persons who were not involved in the crime.

(Para 9)

H. S. Gill, Senior Advocate with H. C. Rahi, Advocate,  
for the petitioners.

Sunil K. Vashisth, AAG, Haryana, for the respondent.

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JUDGMENT

**SATISH KUMAR MITTAL, J,**

(1) Feeling aggrieved against the order dated 9th October, 2003 passed by the learned Additional Sessions Judge, Kurukshetra, petitioners Isham Singh, Charana and Saraba, have filed this petition for quashing of the said order,—*vide* which they have been summoned as an additional accused to face the trial under Sections 323, 324, 325, 326 and 34 I.P.C. along with four more accused.

(2) In this case, on the written complaint of one Jodha Ram, an FIR was lodged against seven persons under the aforesaid Sections at Police Station, Pehowa. In the said complaint, it was alleged that the complainant and the accused were having their agricultural land adjacent to each other. On account of spray of pesticides, there was some misunderstanding in the mind of the accused. On that account, one day. i.e., on 18th March, 2001, all the accused armed with deadly weapons came in the street in front of the house of the complainant and started abusing him. When the complainant asked why they were abusing him. Upon this all the accused raised a lalkara and started to give Lathis, Kulhari and Saria blows on the body of the complainant. The accused persons caused injuries on his legs, head, back and other parts of the body and also caused fracture on the leg. The complainant cried in loud voice, upon which, Jagdish, Ram Singh and Santosh, wife of the complainant attracted to the spot and rescued the complainant from the cruel clutches of the accused. Thereafter all the accused ran away from the spot along with their respective weapons, after giving threat to kill the complainant in near future.

(3) The complaint was referred under Section 156(3) Cr. P. C. on the basis of which, the aforesaid FIR was registered. The matter was investigated by the police. On enquiry, the police found that all the three petitioners were not involved in the crime and the challan was only filed against four persons from whom the weapons were recovered and who, according to the police investigation, were involved in the crime.

(4) The Illaqa Magistrate found a *prima facie* case and chargesheeted the four accused. The prosecution in its evidence examined Ram Singh, PW-1, eye witness ASI Ram Pal-PW 2 and Jodha Ram,

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complainant-PW 3. At that stage, an application was filed by the complainant under Section 319 Cr. P. C. for summoning the petitioners to stand trial with the remaining accused. The said application was allowed by the learned trial Court,—*vide* impugned order.

(5) The learned counsel for the petitioners submitted that the learned Additional Sessions Judge has acted illegally while summoning the petitioners as an additional accused to face the trial as from the evidence got recorded by the prosecution, it is not reflected that the petitioners had committed the offence. As per the prosecution version, there were three eye-witnesses of the occurrence, namely, Ram Singh, Jagdish and Smt. Santosh. Out of the three eye-witnesses, statement of only Ram Singh was got recorded. In his statement as PW 1, Ram Singh did not support the prosecution version and he was declared hostile. The statements of the other two alleged eye-witnesses were not recorded before passing of the impugned order. However, another independent eye-witness, namely, Jagdish, in his statement before the police under Section 161 Cr. P. C., did not name any of the petitioners for the alleged offence. The second witness examined by the prosecution is PW 2, ASI Ram Pal. This witness has also not named any of the petitioners for the alleged offence. According to him, in his investigation, all the three petitioners were not involved in the occurrence. Further, no recovery of any weapons used in the crime, was made from the petitioners. All the weapons were recovered from the possession of the four accused, who, as per the police investigation, were involved in the crime. He categorically stated that according to his investigation, the complainant has falsely named the three petitioners. The third witness, which the prosecution examined is Jodha Ram-complainant. In his statement, he has stated that all the seven accused collectively came before his house and started abusing him. When he asked them to stop him abusing all the accused assaulted him. Thereafter, this witness attributed specific injuries to the accused, including the petitioners. The attribution of the specific injury to each of the accused is an improvement, because, in the complaint, no specific injury was attributed to any accused, including the petitioners.

(6) After referring the aforesaid evidence recorded by the prosecution, on the basis of which the petitioners have been summoned as an additional accused to face the trial, learned counsel for the petitioners submitted that on the basis of the aforesaid evidence, the

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petitioners could not have been summoned as an additional accused. He submitted that admittedly, there was an enmity between the families of the petitioners and the complainant and with that object, the complainant has falsely involved all the seven family members of the petitioners. He submitted that none of the independent witness has supported the case of the prosecution. Even the Investigating Officer has stated before the Court that as per his enquiry, the petitioners were not present at the time of occurrence and the complainant has falsely implicated them with oblique motive. The only evidence, on the basis of which, the petitioners have been summoned, is the said portion of the statement of the complainant-Jodha Ram, where he has specifically named the petitioners with specific injuries. This part of the statement is clearly an improvement on the first version mentioned in the written complaint, on the basis of which, FIR was registered. The said portion of the statement is not sufficient for summoning the petitioners as an additional accused. In support of his contention, learned counsel for the petitioners relied upon the decision of the Hon'ble Supreme Court in **Michal Machado and another versus Central Bureau of Investigation and another** (1), and a decision of this Court in **Dr. Sant Singh versus State of Punjab**, (2).

(7) On the other hand, learned counsel for the respondent-State submitted that the trial Court has rightly passed the impugned order for summoning the petitioners as an additional accused on the basis of the evidence available before it and in the revisional jurisdiction, the said order should not be interfered.

(8) I have heard the arguments of the learned counsel for the parties. The legal position regarding summoning an additional accused to face the trial under Section 319 Cr. P. C. is well settled. The Court has to use the power under Section 319 Cr. P. C. sparingly and primarily to advance the cause of criminal justice, but not as a handle at the hands of the complainant to cause harassment to the person who is not involved in the commission of the crime. The basis requirement for invoking this Section as held by the Hon'ble Supreme Court in Michael Machado's case (supra) is that it should appear to the Court from the evidence collected during the trial or in the inquiry

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(1) 2002 (2) R.C.R. (Criminal) 75

(2) 2002 (2) R.C.R. (Criminal) 719

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that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt from the evidence about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence and second is that for such offence that other person could as well as tried along with already arraigned accused. But it always remains the discretion of the Court as the legislation has used the words "the Court may proceed against such person". The discretionary power so conferred should be exercised by the Court only to achieve the criminal justice. It is not that the Court should turn against the person whenever it comes across the evidence connecting that another person also with the offence. A judicial exercise is called for keeping a conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(9) Coming to the facts of this case, the evidence produced by the prosecution during the trial, in my opinion, is not enough to frame an opinion that the petitioners have committed the alleged offence. Merely, because the complainant while appearing as PW 3 has named the petitioners by attributing specific injuries to them, it cannot be inferred that the petitioners were involved in the crime particularly when this version of the complainant was an improvement on his earlier written version and the fact that there was an enmity between the parties. In my opinion, the case in hand was not the case where the trial Court should have exercised its discretionary power to summon the petitioners as an additional accused particularly in view of the feeble evidence led by the prosecution which does not connect the petitioners with the commission of the crime. In my view summoning of the petitioners as an additional accused will not achieve any criminal justice. Rather, it will be abuse of the process of the Court to entangle the persons who were not involved in the crime.

(10) In view of the aforesaid discussion, this petition is allowed and the order dated 9th October, 2003 passed by the learned Additional Sessions Judge is set aside and that of the learned Judicial Magistrate 1st Class, is restored.

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**R.N.R.**