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**(2009) 30 CriminalCC 886**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. M-18619 of 2008

Gurdev Singh

APPELLANT

Vs

State of Haryana and  
Another

RESPONDENT

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**Date of Decision:** July 27, 2009

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 319, 482

**Citation:** (2009) 30 CriminalCC 886

**Hon'ble Judges:** Augustine George Masih, J

**Bench:** Single Bench

**Advocate:** S.S. Behl, for the Appellant; Yash Pal Malik, AAG, Haryana for Respondent No. 1 and Surinder Singh, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Augustine George Masih, J.

This petition has been preferred u/s 482 of the Code of Criminal Procedure praying for quashing of the summoning order dated 25.04.2008 (Annexure P3) and the charge dated 11.07.2008 (Annexure P4) framed against the petitioners by the Court of Additional Sessions Judge (Ad-hoc), Fast Track Court, Ambala.

2. Counsel for the petitioners contends that the petitioners could not have been summoned on an application moved by the prosecution u/s 319 of the Code of Criminal Procedure as he contends that only on the statement of the complainant, the Court has exercised its powers and summoned the two petitioners in the present petition as additional accused to face the trial and thereafter had proceeded to frame the charges against them. He contends that as per the judgment of the Hon'ble Supreme Court in the case of Rakesh & Anr. v. State of Haryana, 2001 ACJ 39 (S.C.) : 2001 (3) RCR (Cri) 681 SC and Mohd. Shafi v. Mohd. Rafiq, 2007 (3) CCC 2 II (S.C.) : 2007 (2) RCR (Cri) 762, the petitioners could not have been summoned u/s 319 of the Code of Criminal

Procedure unless the witness had been cross examined and the evidence of the witness is complete. He has further relied upon the judgment of this Court in *Rajbir Singh v. State of Haryana & Ors.*, 2006 (3) RCR (Cri) 195 to contend that the trial Court on consideration of an application u/s 319 Cr.P.C. is required to record reasons of satisfaction on the basis of the entire material on the record to come to a conclusion that there is reasonable prospect of convicting the accused of the offence before they are to be summoned. He submits that the said test having not been fulfilled by the trial Court while passing an order summoning the two petitioners, the summoning order as well as the charge framed against them cannot be sustained and deserves to be set aside.

3. Counsel for the complainant as well as the State contend that the tests, which have been laid down by the Hon"ble Supreme Court in its various judgments stood fully satisfied in the present case. They further submit that the provisions, as contained u/s 319 Cr.P.C. and the requirement for summoning a person as an additional accused has been satisfied as the Court has recorded its satisfaction of their being likely to be convicted. Reliance has been placed on the judgment of this Court in the case of *Kartar Singh v. State of Punjab*, 2008 (1) LH (P&H) 237 and on the basis of the said judgment, the counsel for the complainant has submitted that the judgments, which have been relied upon by the counsel for the petitioners, have been considered therein and the Court has come to a conclusion that there is no legal requirement to wait conclusion of cross-examination of the witness before considering the aspect of summoning a person as an additional accused. What is required is satisfaction of the Court with regard to reasonable prospect to his conviction for an offence which he appears to have committed.

4. I have heard the counsel for the parties and have gone through the records of the case.

5. The two petitioners before this Court, Gurdev Singh and Vikram Singh have been named in the FIR wherein specific role has been attributed to them by the complainant-Bant Singh. As per the allegations, Gurdev Singh and Vikram Singh were armed with gandas and one injury each of gandasi blow was given by Gurdev Singh and Vikram Singh on the head of Harjit Singh and in addition thereto Vikram Singh also inflicted a gandasi blow on Ranjit Singh. During the investigation, the weapon of offence i.e. gandasi was duly recovered by the prosecution from Gurdev Singh-petitioner No. 1. A final report was prepared u/s 173 Cr.P.C. where Gurdev Singh and Vikram Singh were also arrayed as accused persons. Thereafter, an enquiry was conducted by DSP, Naraingarh, who found the two accused to be present at the spot but stated that they did not participate in the occurrence as they had arrived there after the incidence has already taken place and were trying to put the parties apart from fighting. These observations were made by the Deputy Superintendent of Police on the basis of the affidavits given by 15 persons of the locality. On this basis, petitioners No. 1 and 2 were placed in Column No. 2 in the final report submitted u/s 173 Cr.P.C. PW1 Bant Singh-complainant appeared before the trial court in the witness box on 18.03.2008 and had deposed about the incidence which took place on 25.11.2007 at about 4.00 P.M. In that statement also, he

has specifically stated with regard to these two petitioners as follows:-

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On hearing of hue and cry, my sons, namely, Harjit @ Ranjit arrived at spot. In the meantime one Gurdev Singh and one Vikram also came armed with their respective "gandasies" from the side of dera of accused Sukhwinder Singh. Gurdev Singh then inflicted a gandasi blow over the head of Harjit Singh. Accused Balwant Singh inflicted a kassi blow over the chest and the other kassi blow over the right leg above the knee of Harjit Singh. Accused Kulwant Singh inflicted a gandasi blow to Ranjit Singh. Vikram also inflicted a gandasi blow to Ranjit Singh. Accused Balwant Singh inflicted a kassi blow on the left arm of Ranjit Singh. Accused Rajinder Singh also inflicted a lathi blow to Ranjit Singh. Thereafter, my nephew Jeewan Singh and Baljinder Singh along with other villagers arrived at the spot. Accused persons then left the spot and went towards dera. They, however, extended threatening while leaving the spot and stated that today we have escaped but they will kill us in future.

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All the four accused persons named above are present, but Gurdev and Vikram are not present whereas they both have also taken part of this occurrence. (At the stage three sealed parcels containing one gandasi in each parcel, one sealed parcel containing a kassi and another sealed parcel, one sealed parcel containing a kassi. and another sealed parcel containing a lathi opened. All the weapons shown to the witnesses to which he admits same as used by accused persons in the present occurrence. Gandasis are marked as Exh.MO/1 to Exh.MO/3, Lathi is marked as Exh.MO/1 to Exh.MO/3, Lathi is marked as Exh.MO/5).

6. As the counsel for the accused started his cross examination, an application u/s 319 Cr.P.C. was moved by the public prosecutor for summoning Gurdev Singh (petitioner No. 1) and Vikram Singh (petitioner No. 2) as additional accused persons to face the trial. The said application on consideration was allowed by the trial Court vide order dated 25.04.2008 wherein all these facts were taken into consideration as have been mentioned above and thereafter had come to the conclusion that the presence at the spot of both the petitioners, namely, Gurdev Singh and Vikram Singh stood admitted by the police also in their investigation. Their names were duly mentioned in the FIR as well as the statements of prosecution witnesses recorded u/s 161 Cr.P.C. as the assailants. The complainant-Bant Singh PW1 has, on oath, stated that both Gurdev Singh and Vikram Singh have actively participated in the occurrence and caused injuries to his sons with sharp edged weapons and the said weapon i.e. gandasi has been recovered from Gurdev Singh and on the basis of these, the Court has come to a conclusion that there is every likelihood that if both of them are summoned as additional accused persons to face the

trial, they could face conviction. The test, therefore, as provided in the judgment of the Hon"ble Supreme Court in the case of Michael Machado v. Central Bureau of Investigation, 2000 ACJ 404 (S.C.) : 2000 (2) RCR (Cri) 75 that summoning could not be ordered only on the basis of suspicion and additional accused is to be summoned only when there is reasonable prospect of his conviction for an offence which he appears to have committed, stood fully satisfied.

7. The judgments, which have been relied upon by the counsel for the petitioners, namely, Rakesh & Anr. (supra) and Mohd. Shafi (supra) have been duly considered by this Court in Kartar Singh's case (supra) wherein this Court has come to the conclusion that the ratio laid down in those cases in the given facts and circumstances of those cases was that it is primarily the satisfaction of the Court and a prima facie conclusion that a person, who is to be summoned as an additional accused, is involved in the commission of the crime for which he can be tried along with those who stood already named by the police as accused. In Ranjit Singh v. State of Punjab, 1999 (1) ACJ 176 (S.C.) : 1998 (4) RCR (Criminal) 552, the Hon"ble Supreme Court has held that it is not necessary for the Court to wait until the entire evidence is collected for exercising its powers u/s 319 of the Code of Criminal Procedure. It has further been held that it is difficult to accept the contention that the word "evidence" as used in Section 319 Cr.P.C. would mean evidence, which is tested by cross-examination and the question of testing the evidence by cross examination would arise only after addition of the accused. The word "evidence" occurring in sub-section is used in comprehensive and broad sense, which would also include the material collected by the Investigation Officer and the material or evidence which comes before the Court during trial and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of crime.

8. In this view of the matter, the contentions, as raised by the counsel for the petitioners, cannot be accepted and no illegality can be said to have been committed by the trial Court while exercising its powers u/s 319 of the Code of Criminal Procedure for summoning the petitioners as additional accused. The summoning order dated 25.04.2008 (Annexure P3) passed by the trial Court is in accordance with law and, therefore, upheld.

9. In the light of the above, charge as framed by the trial Court vide order dated 11.07.2008 deserves to be upheld as the same is based on the evidence, which has been collected by the prosecution and which has come before the Court during the trial. The order dated 11.07.2008 passed by the Additional Sessions Judge (Ad-hoc) Fast Track Court. Ambala is also upheld.

10. Finding no merit in the present petition, the same stands dismissed.