



CRM-M-2543-2025 (O&amp;M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

223+125

CRM-M-2543-2025 (O&M)  
Date of Decision: September 19, 2025

**Dashera****....Petitioner****Versus****State of Haryana****....Respondent****CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Saurabh Sharma, Advocate,  
for the petitioner.

Mr. Amish Sharma, AAG, Haryana.

Mr. Mayank Gupta, Advocate,  
for the complainant.

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**SANJAY VASHISTH, J.**

1. Petitioner – Dashera has filed the instant petition, under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short, ‘the 2023 BNSS’), for quashing of the impugned order dated 03.12.2024 (Annexure P-3), passed by learned Additional Sessions Judge, Jind (Trial Court), in case bearing CIS No. SC/81-2019, titled as ‘State v. Dashera’, arising out of FIR No. 106, dated 03.05.2016, under Sections 302, 323, 148, 149 and 120-B IPC, registered at Police Station Uchana, District Jind, whereby the application dated 17.09.2024 (Annexure P-2), filed by the petitioner has been dismissed to the extent of summoning and examining Ishwar Singh, a co-accused in the said case and already held guilty by the Trial Court. However, the petitioner has been allowed to summon the Incharge Record-Room alongwith case file bearing CIS No. SC/200-2016 to prove alleged CD/pen drive annexed in that file.



2. In fact, said Ishwar Singh (proposed defence witness) was challaned by the police at the first instance and thereupon also convicted by the Trial Court for commission of offences punishable under Sections 120-B, 148, 323 and 302 read with Section 149 IPC, vide judgment of conviction dated 14.11.2022 and order of sentence dated 16.11.2022. Appeal filed by him against his conviction, i.e. CRA-D-72-2023, is lying its adjudication before this Court (Punjab and Haryana High Court).

3. The petitioner could not be arrested by the investigating agency earlier, and trial qua him commenced only after his arrest and filing of supplementary challan.

4. After hearing learned counsel representing the petitioner, following order was passed by this Court on 17.01.2025:

*“1. Present petition has been filed by the petitioner for quashing of the impugned order dated 03.12.2024 passed by learned Additional Sessions Judge, Jind, in case bearing FIR No. 106, dated 03.05.2016 under Sections 148, 149, 302, 323 r/w 120-B of IPC, registered at Police Station Uchana, District Jind.*

*2. Counsel for the petitioner inter alia contends that the petitioner is facing trial under Section 302 IpC, and under the same FIR, there was another accused namely Ishwar Singh, who has already been convicted in the separate proceedings. However, on account of the fact that the petitioner was arrested later on, his proceedings of trial were intiaited later and separately.*

*3. Now, in the same proceedings, petitioner wishes to summon co-accused (now a convict), as a defence witness, and for that purpose, he moved an application, which obviously must be under Section 315 of Cr.P.C. Said application has been dismissed by learned trial Court by observing that the petitioner cannot seek summoning of the co-accused as a defence witness.*

*4. For reference, Section 315 Cr.P.C. is noticed and reproduced hereunder:-*

**“315. Accused person to be competent witness.**



*(1) Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial: Provided that -*

*(a) he shall not be called as a witness except on his own request in writing;*

*(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.*

*(2) Any person against whom proceedings are instituted in any Criminal Court under Section 98, or Section 107, or Section 108, or Section 109, or Section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings :Provided that in proceedings under Section 108, Section 109 or Section 110, the failure of such person to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.”*

5. *Notice of motion.*

6. *On advance notice, Mr. Pawan Kumar Jhanda, DAG, Haryana, puts an appearance on behalf of the respondent/State, and seeks some time to assist the Court.*

7. *List again on 23.01.2025.*

8. *To be taken up at 2.00 P.M.”*

5. Going through the import of Section 315(1)(a) Cr.P.C., this Court is firm in its opinion that the legislation itself has drawn an exception as to when such a witness can be examined in witness-box, because right of appearing as a witness is found vesting only in the



accused himself and with none else including his other co-accused, if any, in the case.

6. To understand the intention, as to why the legislation has carved out such an exception, this Court finds itself guided from the specific provision contained in Article 20 of the Constitution of India, which is reproduced as under:-

**“20. Protection in respect of conviction for offences. -**

*(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.*

*(2) No person shall be prosecuted and punished for the same offence more than once.*

***(3) No person accused of any offence shall be compelled to be a witness against himself.”***

7. Faced with this, learned counsel for the petitioner made another attempt by submitting that the request/prayer made by the petitioner is worth consideration, subject to acceptance of the same by the proposed witness, who himself is a convict as of now.

8. This argument advanced by learned counsel for the petitioner seems to be backed up by impractical idea because the statute book has nowhere empowered the Court with a specific provision to call for any such accused, subject to the acceptance of such witness and that too just to the wish and whims of co-accused in the case.

9. There being no specific provision either in the codified law, i.e. Code of Criminal Procedure or in the newly enacted Bhartiya Nagrik



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Suraksha Sanhita, 2023, and the Constitution of India, the prayer of the petitioner cannot be accepted.

Accordingly, present petition is **dismissed** being devoid of merit.

( SANJAY VASHISTH )  
JUDGE

September 19, 2025

Pk Kapoor

Whether speaking/reasoned	✓ Yes
Whether reportable	✓ Yes