

224A

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-2941-2013

Date of Decision: 20.07.2015

BHAGWAN KAUR AND ANOTHER

.....Petitioners

Vs

STATE OF PUNJAB AND ANOTHER

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. P.S.Ahluwalia, Advocate  
for the petitioners.

Mr. Varun Sharma, AAG, Punjab.

Mr. P.S. Salar, Advocate  
for respondent No.2.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

**RAJ MOHAN SINGH, J.(Oral)**

FIR No.41 dated 25.03.2009 under Sections 307, 365, 341, 323, 324, 506, 427, 148, 149 IPC was registered at the instance of respondent no.2-Harpreet Singh. In the aforesaid FIR, 10 persons were named as accused along with 4-5 persons. Police investigated the case and filed challan qua Ranjit Singh and Kulwant Singh-accused. Even charges were framed against them. Eight persons were placed in column no.2. Entry was made to the effect that

investigation is pending qua them. During the proceedings, one Manjit Kaur died. Later on one more accused Yadvinder Singh also died. Police submitted report under Section 173 Cr.P.C., finding all the eight aforesaid accused namely Bhagwan Kaur-petitioner, Amarjit Kaur, Dharam Singh, Harjit Singh, Kamandeep Kaur, Nirmal Singh, Yadvinder Singh and Manjit Kaur to be innocent. With the death of Manjit Kaur and Yadvinder Singh, only 6 accused remained in the array of accused.

After report under Section 173 Cr.P.C. and even after passing of impugned order, Yadvinder Singh died. Learned counsel for the petitioner assails the impugned order passed by Additional Sessions Judge, Sangrur on the ground that the Court relied upon **Dharampal and another versus State of Haryana and another, 2013 (3), RCR (CrI.) 787** for summoning the aforesaid accused to face trial. The order is conspicuously silent about nature, whether same has been passed under Section 319 Cr.P.C. or by invoking powers under Section 190 Cr.P.C? Apparently, **Dharampal's case** (supra) could not be relied particularly when the Court itself has based its conclusion on the basis of testimony of PW-3. According to learned counsel, the trial Court is not justified in mixing both the stages of pre-cognizance in terms of Section 173 Cr.P.C. as well as the order based on testimony of complainant-PW-3 at trial. There is no application under Section 319 Cr.P.C. filed by either of the parties i.e. prosecution as well as the complainant, nor any satisfaction has been recorded by the trial Court vis-a-vis the availability of material justifying summoning in terms of Section 319 Cr.P.C. Since the order

in question has been passed solely on the basis of report under Section 173 (8) Cr.P.C., the same cannot be presumed to have been passed while exercising jurisdiction under Section 319 Cr.P.C.

Learned State counsel duly assisted by Mr. S.S. Salar, however, admits the aforesaid factual position on record. The aforesaid anomalous situation can only be set at right by remanding the case back to the trial Court for passing fresh orders in accordance with law.

Disposed of.

**(RAJ MOHAN SINGH)**  
**JUDGE**

**July 20, 2015**  
*SwarnjitS*