

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

\* \* \* \* \*

**Crl. Revision No. 247 of 2014**

Date of decision : February 16, 2015

\* \* \* \* \*

Kiran Pal and another

.....Petitioners

Versus

State of Haryana and Raj Singh

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. N.S Shekhawat, Advocate for the petitioners.

Mr. Vikramjit Singh, Addl. A.G., Haryana.

Mr. Bhag Singh, Advocate for respondent no.2.

\* \* \* \* \*

1. *Whether Reporters of Local Newspapers 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?*

**RITU BAHRI, J**

Challenge in this Criminal Revision Petition is to the order dated 10.12.2013 passed by learned Additional Sessions Judge, Kaithal, whereby the application under Section 319 Cr.P.C moved by the prosecution was partly allowed and the petitioners were summoned to face trial with the principal accused for the offences punishable under Sections 148, 302, 323, 324 read with Section 149 IPC in a case arising out of FIR No. 157 dated 9.12.2012 registered at Police Station Rajound, District Kaithal.

As per the statement of the complainant, Raj Singh on

8.12.2012, there was ghurchari ceremony of Monu son of Thath Singh at Village Khurda. At that time along with Monu, Sompal son of Phoola Ram, Jagmal, Karam Singh and Hanspal sons of Aflatoon, Billu son of Jaikishan, Anil son of Jaibir, Rajmohan son of Nanda, Kiranpal son of Kashmira, Pritam son of Pitamber and Anirudh son of Kaptan residents of Khurda having gun, pistol, sword and dandas were coming while firing in the air. When they reached near Kashyap Choupal, Sompal stabbed a knife in the stomach of elder brother of complainant named Rajinder. Monu proceeded further. The complainant his father Karan Singh and brother Binder the son of his uncle named Rajesh, Rishi and his uncle Dharampal went near liquor vend Khurda at about 8.00 p.m to ask the reason for stabbing the knife and they asked from Sompal etc. that whey they stabbed the knife. On that Sompal fired a shot at the father of complainant, Karan Singh which hit in his chest and he died at the spot. Kaladhari and Billu caught hold the complainant and beaten him with dandas. He sustained injuries on his right leg, right arm, forehead and left ear. Kiran Pal caught hold of the brother of the complainant named Binder. Monu and Jaipal attacked with dandas at Binder. Inder, Anirudh, Pritam and Jagmal caused injuries with dandas to Rajesh and Rishipal. The reason behind the dispute was that about 4-5 months ago, Mahender son of Gopi resident of Khurda was murdered in which Sompal, Jagmal and Karam Singh were named as suspect. Due to that grudge the father of the complainant was murdered and injuries have been caused to complainant etc. This

incident was witnessed by Mahipal and Harkishan residents of Khurda. In the statement of the complainant, mention has been made about the two incidents. One incident had taken place when the ghurchari ceremony of Monu was being performed and Rajinder was stabbed by Som Pal. The second incident took place when the complainant, his father Karan Singh, brother Binder son of his uncle Rajesh, Rishi and his uncle Dharampal went near liquor vend Khurda at about 8.00 p.m to ask reason for stabbing the knife, where Som Pal fired a shot at the father of complainant named Karam Singh who died at the spot. Injuries were caused to the complainant etc. also in that incident.

The complainant in his statement before the police and while appearing as PW-1 named Monu, Pritam and Kiran Pal and specific injuries were attributed to them in the statement. All the three were kept in column no.2.

While considering the application under Section 319 cr.P.C, the trial Court has examined the allegations and role attributed to the three persons. It was held that there is specific evidence against accused Kiran Pal, Monu and Pritam and they are liable to be summoned as additional accused. Application under Section 319 Code of Criminal Procedure, 1973 was allowed qua them on 10.12.2013.

Counsel for the petitioner has referred to the MLR of Binder brother of the complainant (Annexure P-3) dated 8.12.2012.

As per the allegations, Binder had been inflicted injuries by Monu and

Jaipal with dandas. A perusal of Annexure P-3 shows that there were three injuries on the person of Binder which are as under:

*1. Lacerated wound 6 x 05 cm over head left side on scalp.*

*Adv. CT Scan Head Surgeon opinion -KUO – Blunt*

*2. Lacerated wound 4.5. x 1 cm over wrist (....sic) of left hand*

*Adv. X-ray wrist-KUO-Blunt*

*3. C/o Pain in thumb (Rt) abrasion present on thumb.*

*Adv. X-ray hand -KUO -Blunt*

These injuries are simple in nature.

As far as Kiran Pal is concerned, no injury has been attributed to him. As far as Monu is concerned on the date of the incident it was his Ghurchari ceremony in which all the accused were a party and were proceeding in a group in Village Khurda. Jai Pal is facing trial as challan was presented against him. A perusal of the MLR (Annexure P-3) further shows that there was one lacerated wound on the head and hand and there was pain in the thumb. These injuries can simply be attributed to one person i.e Jaipal who is facing trial. There was no evidence to show that Monu and Jaipal had attacked with dandas on Binder and inflicted injuries. There would have been more injuries on the person of Binder if he had been attacked by two persons with dandas which was not the case in hand. Moreover another fact which can be taken into consideration is that it was the marriage of Monu on 8.12.2013 when the alleged incident took place. His presence at the time of second

incident, therefore, becomes doubtful. The object of provision of Section 319 Cr.P.C has been considered by the Supreme Court recently in the case of ***Hardeep Singh vs. State of Punjab and another 2008 (4) RCR (Criminal) 947***, where an extra caution has to be exercised by the Courts for summoning the accused during the pendency of a trial. It is not merely prima facie opinion which is required to be examined by the Court but the power under Section 319 has to be exercised sparingly only on the basis of the evidence adduced before the Court during a trial. In the facts of the present case in the second case, it was Som Pal who had fired a shot which hit the father of the complainant and he died on the spot. The allegations of inflicting injuries on the complainant's brother as made out in MLR (Annexure P-3) which was attributed to Jai pal can only be made out against Jai Pal. Merely stating a name by the prosecution witness does not corroborate the MLR (Annexure P-3). Kiran Pal has not been attributed any injury and injuries on the person of Binder cannot be attributed to Monu as challan against Jai Pal had only been filed. No ground is made out to summon Monu and Kiran Pal.

In view of the above, present criminal revision petition is allowed. Order dated 10.12.2013 passed by Additional Sessions Judge, Kaithal is hereby quashed.

February 16, 2015

**ritu**

( **RITU BAHRI** )  
**JUDGE**