

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-7065 of 2016

Date of Decision: September 24, 2016

Gurbhej Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.S.S. Gill, Advocate
for the petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

Mr. J.S Thind, Advocate for respondents No.2 and 3.

Mr.S.P.S. Sidhu, Advocate for respondent No.4.

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M.M.S. BEDI, J.

The petitioner, through instant petition under Section 482 Cr.P.C, has sought quashing of the order dated 18.01.2016, Annexure P-8, passed by the trial Court, refusing to summon respondents No. 2 to 4 as additional accused in an application under Section 319 Cr.P.C filed by the petitioner-complainant.

It has been vehemently contended by learned counsel for the petitioner that the FIR had been registered on the allegations that on

20.06.2014 at about 08:30 AM the petitioner-complainant along with his father Darshan Singh, uncles Karnail Singh, Gurmit Singh and Kulbir Singh, all sons of Kartar Singh, Jarnail Singh, Puran Singh, Balbir Singh and Subhash Chander had reached the land which belonged to the Panchayat but had been illegally occupied by accused Balbir Singh and others since 2008. Petitioner along with other people had also taken few media persons along with them in order to highlight the illegal usurping of land by Balbir Singh and others. On their way back when they had reached near the fields of Puran Singh, respondent No.2 Dalip Singh carrying .12 bore gun, respondent No.3 Lakhwinder Singh armed with a 'dang' and respondent No. 4 Kikkar Singh, Sarpanch along with other members of unlawful assembly who were also armed with firearms, kapas etc. reached there and threatened the petitioner, his father and his uncles for getting the panchayat land vacated by involving media.

As per the allegations in the FIR, the altercation took place between two groups in which Karnail Singh was hit by a shot fired by Gurbachan Singh which hit him on the left side of his chest whereas Kulbir Singh was hit by a shot fired by respondent No.2 Dalip Singh which struck on the chest. The weapons used by both the accused, were .12 bore guns. Harjinder Singh snatched .12 bore gun from Gurbachan Singh and fired at petitioner's father Darshan Singh. The bullet struck the left side of his neck. Respondent No.3 Lakhwinder Singh along with Jarnail Singh and Ranjit Singh gave 'daang' blows to Darshan Singh. Two persons i.e. petitioner's uncles Kulbir Singh and Gurmit Singh died on the spot whereas petitioner's

father Darshan Singh and his third uncle Karnail Singh received injuries. However, Karnail Singh also later succumbed to his injuries in the hospital.

Learned counsel for the petitioner has vehemently contended that as per the allegations in the FIR, it was respondent No.4 Kikkar Singh who had instigated the other accused. Respondent No.4 Kikkar Singh, Sarpanch of the village Kutbewala, is having strong political influence with higher echelons. He has also argued that in the present case the FIR was registered on the basis of statement of the petitioner. On the next day i.e. 21.06.2014, after a gap of 24 hours another DDR No. 38 was recorded by accused Ranjit Singh as a counterblast to the FIR registered at the instance of the petitioner wherein wrong allegations were leveled against the petitioner, his father Darshan Singh and three deceased uncles of the petitioner with an objective to create a false defence and to pressurize the petitioner to settle the dispute with the complainant party.

Challan was presented by the police on the basis of the investigation by arraying six persons, namely:

- (1) Gurbachan Singh
- (2) Harjinder Singh
- (3) Sukhdev Singh
- (4) Narinder Singh
- (5) Balbir Singh
- (6) Ranjit Singh

During trial, the statement of petitioner Gurbhej Singh was recorded on 24.04.2015 as PW-1 in which specific attributions have been made against respondents No. 2, 3 and 4 i.e. Dalip Singh, Lakhwinder Singh

and Kikkar Singh. Copy of the statement of the petitioner along with cross-examination has been placed on record as Annexure P-5.

The investigating agency presented supplementary challan on the basis of further investigation conducted under Section 173 (8) Cr.P.C and included the names of respondents No. 2 to 4 showing them innocent and arrayed as accused in column No.2. Copy of the supplementary challan dated 30.10.2015 has been appended as Annexure P-6.

In view of the names of respondents No. 2 to 4 having been kept in column No.2 in the supplementary challan, an application under Section 319 Cr.P.C was moved by the petitioner for summoning them as additional accused but vide order dated 18.02.2016 the said application was dismissed.

Strong reliance has been placed on the judgment of the Apex Court in **Hardeep Singh and another Vs. State of Punjab and another**, 2014 (1) R.C.R (Criminal) 623 in support of the contentions that the evidence produced is prima facie sufficient enough to try respondents No. 2 to 4 as additional accused, even if, it is debatable whether it would result in conviction or not.

With the assistance of learned counsel for the petitioner, I have gone through the allegations against respondents No. 2 to 4 in a triple murder case.

Respondent No.2 Dalip Singh was allegedly armed with .12 bore gun and fired shot hitting the chest of Kulbir Singh. Respondent No. 3 Lakhwinder Singh is attributed an injury with 'daang' along with Jarnail Singh and Ranjit Singh who have also been attributed 'daang' blows on the

person of father of petitioner Darshan Singh. Respondent No.4 Kikkar Singh, Sarpanch, has only been attributed 'lalkara'.

With the assistance of counsel for the petitioner and State counsel, I have gone through the statement of PW1 Gurbhej Singh. The investigating agency on the basis of investigation had filed a supplementary challan under Section 173 (8) Cr.P.C. including the names of respondents No.2 to 4 and kept their names in column No.2 but an application filed by the petitioner to summon them as additional accused has been dismissed.

A careful perusal of the statement of petitioner as PW1 indicates that he has specifically attributed role of having fired with 12 bore gun to respondent No.2 Dalip Singh resulting in the death of Kulbir Singh. The individual role attributed to respondent No.3- Lakhwinder Singh and respondent No.4 Kikkar Singh has been appreciated by this Court in context to the parameters laid down by the Apex Court in **Hardeep Singh's** case (supra) and I am of the opinion that respondent No.4 has not been attributed any specific injury but is alleged to have raised lalkara. Respondent No.3 Lakhwinder Singh was armed with dang. He was member of unlawful assembly along with Ranjit Singh and Jarnail Singh and has been attributed a dang blow on the person of father of the petitioner, namely, Darshan Singh. Prima facie he can be tried along with the other accused. No opinion is expressed whether it is a case of only prima facie evidence against him or it is a case which would warrant conviction with the aid of Section 149 IPC lest it should prejudice the rights of the complainant or the accused. But so far as respondent No.4 Kikkar Singh is concerned, no sufficient ground is made out to proceed against him

The petition is dismissed qua respondent No.4 Kikkar Singh, whereas it is allowed qua respondents No.2 Dalip Singh and respondent No.3 Lakhwinder Singh. The impugned order dated January 18, 2016 is partly set aside in the aforementioned terms.

September 24, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.