

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

CRR No.3789 of 2013 (O&M)
Date of Decision: November 08, 2016

Himmat

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Atul Lakhanpal, Senior Advocate with
Ms.Babli Kumari, Advocate
for the petitioner.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

Mr.Ashok Sehrawat, Advocate
for respondents No.2 to 4.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Haryana and other respondents, challenging the impugned order dated 19.10.2013 passed by learned Addl. Sessions Judge, Rohtak, vide which the application filed by the prosecution under Section 319 Cr.P.C. was dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for respondents No.2 to 4 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that challan against Anil @ Lila, Jai Bhagwan @ Sonu @ Mahal, Sandeep @ Kala and Raj Kumar @ Raju was presented in case FIR No.192 dated 13.05.2010 under Sections 148, 149, 307, 392, 302 IPC and Section 25 of the Arms Act. During the trial, an application under Section 319 Cr.P.C. was filed for summoning Billu @ Baljit, Pardeep and Pesi as additional accused. The brief facts of the case as noted down in the order dated 19.10.2013 passed by learned Addl. Sessions Judge, Rohtak, are as under:-

“2. Brief facts of this case are that on 13.05.2010, an information was received in police control room that an accident of firing occurred on Karor Road. On this, SI Dalel Singh along with EASI Suraj Bhan, EASI Bhup Singh and Constable Sanjay reached at Kheri Sadh New Bye Pass, Himmat son of Phool Singh met him and he made statement that he is agriculturist, he is resident of village Karor. On 13.5.2010, he along with his father Phool Singh, Surender son of Om Parkash, resident of Garhi Bohar, constable Bansi Lal No.1626 were going in car Make Indica bearing No.DL-9CQ/2679 from Karor to District Jail Rohtak to meet his uncle Siri Bhagwan who was in the Judicial Lock-up in District Jail Rohtak. When their vehicle reached near Kheri Sadh Bye Pass near the poultry farm, one vehicle Tawera came from opposite side bearing No.DL-4CN-9872, which strucked with their car. Surender son of Om Parkash resident of Garhi Bohar was driving their Indica Car. Four youths were alightened from Tawera vehicle. The name of first youth was Pardeep son of Ranbir, caste Jat, resident of Karor who was armed with the pistol of 9mm which was in his hand. The name of other youth was Peshi son of Rambir, caste Jat, resident of Village Karor, who was also having pistol 9mm in his hand. The name of third youth was Billu @ Baljor son of Kaptan, caste Jat, resident of village Sisana, who was also having a pistol of 9mm in his hand. The name of fourth youth was Sandeep @ Kala son of Rajinder and he was having a gun of 12 bore in his hand. They have fired with their pistol and gun shot towards his father Phool Singh. On this, his father alightened from the car and rushed towards the village Karor. A pulsar Motor-cycle of red colour came from the side of village Karor and two youths were on the motor-cycle. Their names are Anil @ Lila son of Rame, caste Chhippi resident of Karor and Sonu @ Mahal son of Jai Bhagwan resident of Pinana. They have

encircled his father. Pardeep, Peshi and Billu came their and they were having pistols of 9mm in their hands. Anil, Sandeep, Peshi, Billu and Pardeep fired on his father by the pistols. Sandeep @ Kala fired on Surender son of Om Parkash, who is driver of their vehicle by gun of 12 bore. Pardeep has also fired on Surender (who is driver of their vehicle) by pistol. Constable Bansi Lal tried to fire from his SLR but due to the injuries received in the accident, he could not do so. Pardeep, Peshi, Billu, accused Anil @ Lila had murdered his father Phool Singh and Surender by firing with gun and pistol on them. Accused were arrested. After completion of investigation challan under sections 148/307/302/392 read with section 149 of Indian Penal Code and 25 of Arms Act was prepared against the accused and submitted before the court for commission of trial.”

Learned Addl. Sessions Judge, Rohtak dismissed the application mainly on the grounds that firstly accused sought to be summoned were got discharged by the prosecution before presentation of challan and now there is no material against them for summoning; secondly, on the ground that the Court would satisfy that there was possibility of their conviction and thirdly, the investigating agency has also found these persons as innocent and the Investigating Officer has not been examined so far.

The perusal of the impugned order dated 19.10.2013 passed by learned Addl. Sessions Judge, Rohtak, shows that the findings have not been given as per law. The application under Section 319 Cr.P.C. is to be filed only when during trial, some evidence comes against the persons who are not challaned by the police. Therefore, the fact that these persons who sought to be summoned have been declared innocent by the investigating agency, has no affect. The Court is to see itself from the evidence which came before it, whether it appears to the Court that the persons sought to be summoned are involved in the commission of the offence and should be

tried along with the accused already facing trial or not. The examination of the Investigating Officer is nowhere a pre-condition for summoning additional accused. Similarly, this is also not the law that from the evidence, the Court should be satisfied that evidence will lead to conviction of the additional accused.

The perusal of the FIR as well evidence of PW-4 Himmat shows that Pardeep was stated to be armed with 9mm pistol, Peshi was also armed with 9mm pistol and Billu was also stated to have 9mm pistol in his hand. As per the FSL report, 4-5 pistols of 12mm and 9mm have been shown. There is specific attribution by PW-4 Himmat that these persons were there and they fired on the deceased. Two persons namely Phool Singh and Surrender have died in the occurrence.

From the record, it appears to this Court that these persons are involved in the commission of the offence and they should be tried along with accused already challaned. The impugned order dated 19.10.2013 passed by learned Addl. Sessions Judge, Rohtak, is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed. The application filed under Section 319 Cr.P.C. by the prosecution stands allowed.

November 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No