

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

**AT CHANDIGARH**

**Criminal Revision No.1800 of 2015 (O&M)**

**Date of Decision: 12.01.2016**

Sabina

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

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

Present:- Mr. Mohd. Yousuf, Advocate  
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. B.S. Sewak, Advocate  
for respondent no.2.

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**HARI PAL VERMA J, (Oral)**

Petitioner namely Sabina wife of Kharku, resident of Village Chorwala, P.S. Mulepur, Tehsil and District Fatehgarh Sahib has preferred the present revision petition against order dated 22.4.2015 passed by learned Additional Sessions Judge, Fatehgarh Sahib, whereby on the application filed by respondent no.2-Kulwinder Kaur, the petitioner has been ordered to be

summoned to face trial for offence under Sections 308, 323 read with Section 34 IPC in case FIR No.50 dated 22.6.2013 registered at Police Station Mulepur, District Fatehgarh Sahib.

Learned counsel for the petitioner contends that a bare reading of the FIR shows that the petitioner has not been attributed any injury and even in the statement of PW-1 Harwinder Singh and PW-2 Kulwinder Kaur, no specific role has been attributed to the petitioner regarding causing of any injury to the injured-complainant.

On the other hand, learned counsel for respondent no.2 submits that the petitioner has been named in the FIR, as initially, a dispute had taken place between the petitioner and the complainant.

I have heard learned counsel for the parties.

A bare perusal of the FIR as well as copies of statements of PW-1 Harwinder Singh, who is husband of the complainant and PW-2 Kulwinder Kaur, complainant, shows that there is no attribution of any injury to the petitioner. Therefore, I find that the impugned order passed by learned Additional Sessions Judge is totally mechanical in nature.

In **Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi And Others** [(1983) 1 SCC 1], the Hon'ble Apex Court has held that power under Section 319 CrPC is an extraordinary power which is conferred upon the Court and it should be used very sparingly and only if compelling reasons exist for taking

cognizance against the other person against whom action has not been taken. The relevant observations made in the aforesaid judgment read as under:-

"19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage..."

Reference may also be made to judgment of Hon'ble the Apex Court in the case of ***Lal Suraj alias Suraj Singh and another Versus State of Jharkhand*** AIR 2008 SC (Supp) 1114, wherein it was held that the Court while exercising its jurisdiction under Section 319 CrPC, has to exercise the same on the basis of the fresh evidence. The relevant observations of the Hon'ble Apex Court read as under:-

*"14. No evidence worth the name, therefore, had been brought on record to arrive at a satisfaction that there was a reasonable prospect of conviction of the appellants.*

*15. The approach of the learned Sessions Judge was wholly incorrect. The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”*

In view of the aforesaid, the present revision petition is allowed and the impugned order dated 22.4.2015 passed by learned Additional Sessions Judge, Fatehgarh Sahib is set aside.

January 12, 2016  
**AK**

**( HARI PAL VERMA )**  
**JUDGE**