

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

**Criminal Revision No.1851 of 2016 (O&M)
Date of Decision: 17.05.2016**

Balbir Singh

...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. R.S. Athwal, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present revision petition assailing the order dated 23.2.2016 passed by learned Addl. Sessions Judge, Hoshiarpur, whereby the application filed by the prosecution under Section 319 CrPC for summoning additional accused, has been partly allowed, however, the same was dismissed *qua* respondent no.2 – Kamlesh Kumari.

Briefly stated, on the basis of complaint made by the petitioner, FIR No.34 dated 6.3.2014 under Sections 302, 482, 120-B, 148/149 IPC read with Sections 25/27 of the Arms Act was

registered at Police Station Model Town, Hoshiarpur. As per the case of the prosecution, the complainant Balbir Singh along with his wife Subhash Devi and son Naresh Kumar was sitting on a cot outside his house in the street, whereas Naresh Kumar's wife was sweeping the floor with broom. At about 11-30 A.M., a white colour car stopped at a little distance from the house of the complainant and some young men armed with weapons came out of the said car, who were Deepak Kumar @ Bini son of late Harjinder Singh armed with pistol, Kamlesh Kumari wife of Late Harjinder Singh, Rakesh Kumar armed with kirpan, Himmat Kumar armed with *khanda*, Sheru armed with *kirpan*, Baincha armed with *kirpan*, Sukhi armed with *gandasa*, Goldi armed with *Takua*. Noticing them approaching towards their house, the complainant and his family members stood up from the cots. Kamlesh Kumari raised *lalkara* exhorting others that the killer of their father was in front of them and he should not be spared and be finished, upon which, Deepak Kumar @ Binni started firing with his pistol. On seeing him firing, complainant's son Naresh Kumar started running towards a vacant plot, but the assailants chased and besieged him. Deepak Kumar @ Binni fired two shots with his pistol, hitting Naresh Kumar on his forearm and other parts of the body, as a result of which, he fell down. After he fell down, Sheru caused a *kirpan* blow to Naresh Kumar on his head and the remaining accused also caused injuries on the person of Naresh Kumar with their weapons. The complainant and his wife

raised hue and cry, upon which, all the assailants escaped from the spot along with their weapons while raising *lalkaras* in their car. The complainant took the injured to Civil Hospital, Hoshiarpur, where he was declared dead by the doctors.

Learned counsel for the petitioner contended that though the complainant had specifically named Kamlesh Kumari, Rakesh Kumar, Himmat Kumar, Gurmukh Singh @ Guggu, Harinder Pal @ Hinda, Jatinder Singh @ Sheru, Kuldeep Singh @ Benja, Satnam Singh @ Sukha @ Sukhi, Pawan @ George @ Jai Raj Gazni and Jaspinder Singh @ Goldi for assaulting and causing injuries on the person of his son Naresh Kumar, as a result of which he died, however, the police has kept these accused in column No.2 of the report under Section 173 CrPC. Therefore, application under Section 319 CrPC was moved to summon these accused, however, the trial Court has partly allowed the said application and summoned accused Rakesh Kumar, Himmat Kumar, Jatinder Singh @ Sheru, Kuldeep Singh @ Baincha, Satnam Singh @ Sukha and Jaspinder Singh @ Goldi to face trial under Section 302/120-B IPC along with other accused, however, dismissed the application *qua* Kamlesh Kumari by observing that neither any injury was attributed to her nor she was armed with any weapon and only *lalkara* has been attributed to her.

I have heard learned counsel for the petitioner and perused the impugned order.

Admittedly, no injury has been attributed to Kamlesh Kumari, respondent no.1. She was also not armed with any weapon and only allegation against her was of raising *lalkara*, which allegation has also not found favour with the police and therefore, she has been declared innocent by the police.

This Court in the case of **Hukam Chand and another v. State of Haryana & another 2007(3) RCR (Criminal) 141** has observed that when an accused is found innocent by the police and his name has been kept in column no.2, mere statement of the complainant, which is only reiteration of allegation made in the FIR, cannot be considered as additional evidence and therefore, the Court cannot summon him solely on such statement, particularly when such statement has already been considered by the police. In order to summon a person under Section 319 CrPC, there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned. Mere statement of the complainant *ipso facto* cannot form the basis for summoning a person under Section 319 CrPC. Further, reference may also be made to judgment of Hon'ble the Apex Court in the case of ***Hardeep Singh v. State of Punjab AIR 2009 SC 483***, wherein it has been held that the power under Section 319 CrPC has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, when the facts of the present case are analyzed in view of judgment of Apex Court in ***Hardeep Singh (supra)***, it is

found that the complainant has clearly failed to make out a case for summoning under Section 319 CrPC.

In view of the aforesaid, I do not find any illegality in the impugned order.

Accordingly, the revision petition is dismissed.

May 17, 2016
AK

(HARI PAL VERMA)
JUDGE