

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

Crl. Rev. No.3828 of 2014 (O&M)

Date of Decision: 15.02.2016

Gurbachan Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. M.S. Bedi, Sr. Advocate
with Mr. G.S. Bawa, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. A.G., Punjab
for the respondent-State.

Mr. P.B.S. Goraya, Advocate
for respondents No.2 to 4.

Mr. Hemant Saini, Advocate
for respondents No.5 to 8.

DAYA CHAUDHARY, J. (ORAL)

Crl. Misc. No.32720 of 2015

This application has been moved for placing on record Annexures P-6 and P-7 and for exemption from filing the certified copies of the same.

Criminal Misc. Application is allowed as prayed for.

Crl. Rev. No.3828 of 2014

This revision petition has been filed to challenge the order dated 13.10.2014 passed by the Additional Sessions Judge, Amritsar,

whereby, the application moved by the petitioner under Section 319 Cr.P.C has been dismissed.

Learned counsel for the petitioner submits that as per application moved by the petitioner, total seven persons were sought to be summoned, whereas, while deciding/dismissing the said application, only the case of four persons, sought to be summoned, has been considered and qua remaining three persons, nothing has been said therein. Learned counsel also submits that a specific role has been played by said persons but still, they have not been summoned. Unidentified persons were identified and they were specifically mentioned in the supplementary statement made by the petitioner on the same date. Said persons were wrongly declared innocent and challan was presented only against accused Amarjit Kaur and Rupinder Singh @ Bittu.

Learned counsel for the respondent-State submits that the persons sought to be summoned were found innocent and in detailed inquiry, it was found on the basis of tower location of their mobile numbers that they were not even present at the place of occurrence. Learned counsel for the respondent-State has not disputed regarding non-mentioning of three persons in the order dismissing the application. She also submits that the complainant has herself mentioned the names of four persons only and that too without discussing regarding their roles, whereas, the supplementary statement has been considered on the basis of which they were not found to be involved in the offence.

Mr. Hemant Saini, learned counsel appearing for respondents No.5 to 8 has also reiterated the arguments raised by learned State counsel.

Learned counsel for respondents No.2 to 4 submits that the petitioner could have availed the remedy of clarification of order but such

remedy was not availed by him. He also submits that their role has already been investigated into by the Investigating Agency and they were not found to be involved in the offence.

Heard the arguments of learned counsel for the parties and have also perused the documents available on record including the order, whereby, the application for summoning the additional accused has been dismissed.

Learned counsel for the petitioner has raised various arguments on merits but he has basically emphasized on the point that in the application, seven persons were sought to be summoned, whereas, role of only four persons has been mentioned in the impugned order and nothing has been said qua other three persons. Without giving any specific finding, the impugned order, dismissing the application moved under Section 319 Cr.P.C has been passed.

On perusal of the application moved by the petitioner, it appears that admittedly, seven persons have been sought to be summoned but after going through the impugned order of dismissal of application, it is clear that nothing has been mentioned regarding the other three persons. Even while recording its finding regarding four persons, namely, Sukhjinder Singh @ Laddi, Narinder Singh, Sakkatar Singh @ Pappu and Sarabjit Singh @ Shaba, their reference has not been given. It has also been mentioned that said four persons were earlier not known to the complainant and were mentioned as unidentified persons but subsequently, in the supplementary statement, their names were mentioned. Thereafter, while dismissing application, simply it has been mentioned that the allegations levelled against the said four persons are not sufficient to proceed against them and no ground is made out to summon them as additional accused to face trial along with accused, who

are already facing trial. It has also been mentioned therein that no ground is made out to summon these four persons, namely, Sukhjinder Singh @ Laddi, Narinder Singh, Sakkatar Singh @ Pappu and Sarabjit Singh @ Shaba. It is an apparent mistake in the order as the discussion is only qua four persons. However, the role of three persons, whose names have been mentioned in the application, has been specified in the supplementary statement but nothing has been said regarding them while dismissing the application. It cannot be said that the mistake has been committed inadvertently as in the entire order, their names have not been mentioned at all.

Accordingly, this petition is allowed and the impugned order dated 13.10.2014 passed by the Additional Sessions Judge, Amritsar is set aside.

However, the trial Court is directed to consider the role of other persons along with four persons as mentioned in the impugned order and pass afresh order after considering the statement of the complainant and other documents available on the file.

15.02.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE