

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

**Criminal Revision No.846 of 2015 (O&M)
Date of Decision: 08.04.2016**

Diwan Chand & another

...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. Amrik Singh, Advocate
for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. Paras Talwar, Advocate
for respondent no.2.

HARI PAL VERMA, J.

Petitioners - Diwan Chand and Manohar Lal @ Ricky have filed the instant revision petition against order dated 20.1.2015 passed by learned Additional Sessions Judge, Ropar, whereby they have been summoned under Section 319 CrPC.

Briefly stated, FIR No.41 dated 21.4.2014 under Sections 302, 450, 120-B, 34 IPC was registered at Police Station Nurpur Bedi on the complaint of respondent no.2. As per the FIR,

on 20.4.2014, when complainant and his wife Neelam Devi had gone to the house of his brother-in-law Harvinder Singh at Village Rampur Kalan, Harvinder Singh was sleeping in his room. When he was coming back, he saw that accused Prem Chand son of Daulat Ram, Shami Kumar son of Charan Dass and Suresh Kumar @ Ritha son of Prem Chand and Manohar Lal @ Ricky son of Charan Dass, all residents of Village Rampur Kalan, came in the room of Harvinder Singh having sticks (*dandas*) in their hands. They started beating Harvinder Singh after entering into his room. Diwan Chand son of Bhagat Ram was standing in the courtyard of Harvinder. When the complainant tried to go towards the room, then Diwan Chand told him that in case he moves forward, he will be shot. He saw that Prem Chand and his companions took Harvinder Singh along with them towards the *Barha* while beating him. They all gave blows in the head and body of Harvinder Singh and when the complainant made noise, then all these persons ran away from the spot along with their sticks (*dandas*). The complainant along with his wife Neelam Devi took Harvinder Singh for treatment PHC, Singhpur, where the doctor gave him first aid and referred him to Civil Hospital, Rupnagar, however, he died on the way.

Learned counsel for the petitioners contended that in the said FIR, enquiry was conducted and the petitioners were found innocent, therefore summoning of the petitioners is contrary to the enquiry report. He further submitted that even the

statement of PW-1 Raj Kumar, who appeared as prosecution witness, has also been recorded, wherein he has made verbatim statement, as stated in the FIR. There was no material for the Court below to summon the petitioners, more particularly when the police has conducted the enquiry report and found the petitioners innocent. He relied upon judgment of Hon'ble the Supreme Court in the case of **Lal Suraj @ Suraj Singh v. State of Jharkhand 2009(1) RCR (Criminal) 504** and judgment of this Court in the case of **Hukam Chand & another v. State of Haryana & another 2007(3) RCR (Criminal) 141** to contend that mere statement of the complainant cannot be made the basis for summoning of a person, as additional accused, under Section 319 CrPC, particularly when accused have been found innocent by the police and therefore, the summoning order is liable to be set aside.

Learned State counsel while referring to statement of the complainant Raj Kumar has argued that the complainant has specifically named the petitioners and specific roles have been attributed to them and therefore, there are sufficient reasons to summon the petitioners as additional accused.

I have heard learned counsel for the parties.

Section 319 reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence:- 1) where, in the course of any inquiry into, or trial of, an offence, it

appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

4) Where the Court proceeds against any person under subsection (1) then a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

A perusal of Section 319(1) Cr.P.C. makes it clear that a person not already an accused in a case can be proceeded against if in the course of an inquiry or trial, it appears that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) Cr.P.C. from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against. Reference

may be made to the judgment in ***Suman Vs. State of Rajasthan and another***, (2010) 1 Supreme Court Cases 250.

No doubt, the police has found the petitioners innocent, however, keeping in view the fact that during investigations the names of the petitioners were kept in column no.2 of the challan and the complainant has himself appeared as PW-1 and has specifically named the petitioners and also attributed specific role to them, this Court feels that the trial Court has rightly summoned the petitioners under Section 319 CrPC. Moreover, the number of injuries inflicted upon Harvinder Singh can also be not brushed aside at this stage.

As far as judgments in the cases of ***Lal Suraj @ Suraj Singh*** (Supra) and ***Hukam Chand & another*** (Supra) are concerned, the same do not apply to the facts and circumstances of the present case.

Therefore, I find no reason to interfere with the impugned order.

Accordingly, the revision petition is dismissed.

However, observations made here-in-above shall not be construed any expression on the merits of the case and is confined only to decide the present revision petition. The trial Court shall decide the case on merits without being influenced with the above observations.

April 08, 2016
AK

(HARI PAL VERMA)
JUDGE