

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

CRR No.1381 of 2016 (O&M)
Date of Decision: January 12, 2017

Raman Kanta

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurcharan Dass, Advocate
for the petitioner.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Sanjeev Manrai, Senior Advocate with
Mr.Gaurav Talwar, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. against State of Punjab and other respondents, challenging the impugned order dated 29.02.2016 passed by learned Addl. Sessions Judge, Patiala, vide which the application filed by the complainant-petitioner 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 and 3 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 Chattar Singh Chattra, Achhar Singh and Mihan Singh was presented in case FIR No.20 dated 19.01.2015 under Sections 302/34 IPC and Section 27 of the Arms Act. During the trial, an application under Section 319 Cr.P.C. was filed by the complainant for summoning of Shamsher Kaur and Pal Kaur to face trial. The brief facts of the case as noted down in the order dated 29.02.2016 passed by learned Addl. Sessions Judge, Patiala, are as under:-

“2. Succinctly stated, the facts of the case are that on 19.1.2015 complainant Raman Kanta made a statement to the police to the effect that about 28 years back, her mother-in-law Shamsher Kaur had developed illicit relations with accused Chattar Singh son of Bhura Singh, who was formerly an employee of the police department. Since then, both of them have been living together. She further stated that she alongwith her husband, father-in-law Nirmal Dass and her children, has been living in the area of Darshani Gate, Patiala. However, her mother-in-law Shamsher Kaur, Chattar Singh, her brother in law Achhar Singh, his wife Pal Kaur etc. have been living in the farm house situated in agricultural land, village Tejan Bhatian. Their family has got 106 acres of land belonging to Dera Baba Thandi Ram. Out of the said land, 34 acres of land is in their possession. Shamsher Kaur and Achhar Singh are in illegal possession of 22 acres of land belonging to Dera Baba Thandi Ram. A decree of possession regarding the said land, has already been passed in their favour and warrants of possession were also issued by the Court. Kesar Singh, Field Kanungo of Halqa Bhunerheri had issued the instructions to both the parties to remain present on the spot on that day, to carry out the orders of the Court regarding delivery of possession. On that day at about 11.00 AM, she alongwith her husband Jatinder Dass, father-in-law Nirmal Dass and daughter Poonam went to the spot in their Indica Car bearing registration no.PB-11T-1704. Their servant Jangir Singh son of Modan Ram and Darshan Singh son of Jagar Singh, resident of village Tejan were already present there. Two/three other persons belonging to village Tejan were standing at that place. In the meantime, Ravinder Kumar, Revenue Patwari of village Uppli and Kesar Singh, Field Kanungo also reached the spot. When they had disembarked from their car, her mother-in-law Shamsher Kaur came out of the house and she raised a Lalkara thereby exhorting Chattar Singh to bring his rifle and to deliver the possession of the land to the complainant party

permanently. In the meantime, Chattar Singh brought his 12 bore rifle. Achhar Singh armed with a pistol also came out of the house. Their servant Mihan Singh was having a Danda in his hand. While hurling the expletives on them, they came towards them. Chattar Singh fired from his rifle on her father-in-law Nirmal Dass and the shot had hit into the head of Nirmal Dass. Thereafter, he again fired on Nirmal Dass. Nirmal Dass had fallen at that very place. Her husband had tried to snatch the rifle of Chattar Singh, but in the meantime, Achhar Singh fired on her husband Jatinder Dass from his pistol. The said shot also hit into the head of her husband and he had also fallen down. Thereafter, Achhar Singh fired another shot on her husband. When her husband and father-in-law were lying on the ground, Chattar Singh gave blows with Butt of his rifle on them. Mihan Singh gave Danda blows to them. Her mother-in-law Shamsher Kaur and sister-in-law Pal Kaur kept on exhorting the other accused that today Nirmal Dass and Sarpanch should not be spared. Patwari and Kanungo had ran away when her mother-in-law had raised Lalkara. When they raised roulla, accused went away with their weapons in their car. She further stated that she alongwith her daughter was going to the police station to lodge the report. On the basis of said statement, FIR no.20 dated 10.01.2015 under Sections 302/34 IPC, 25 & 27 Arms Act was registered. During the investigation, the Investigating Officer visited the place of occurrence. He had prepared inquest reports regarding the death of Nirmal Dass and Jatinder Dass. The empty cartridge cases lying on the spot were recovered. Accused Chattar Singh, Achhar Singh and Mihan Singh were arrested and weapons were recovered from them. However, the police found that Shamsher Kaur and Pal Kaur were not involved in the incident and accordingly exonerated them. On completion of investigation, the police presented the challan against accused Chattar Singh, Achhar Singh and Mehan Singh.”

Learned Addl. Sessions Judge, Patiala, held that enquiry officer concluded that Shamsher Kaur and Pal Kaur were not involved in the said occurrence and both of them were exonerated. Learned trial Court also relied upon the call details pertaining to mobile phone No.93570-80022 being used by Shamsher Kaur and tower location and dismissed the application mainly relying upon this evidence.

From the record, I find that the complainant has been examined

as PW-1 and she has specifically deposed regarding the role played by Shamsher Kaur and Pal Kaur by encouraging the accused to commit the murder. Two persons have been killed in the occurrence in the present case and as per the record, they have gone with the revenue official to execute the warrant of possession against Shamsher Kaur. *Lalkara* has been attributed to both the private respondents and further it in the FIR and evidence that they encouraged other accused to cause the occurrence. Both these private respondents have been named in the FIR and they were present at the spot. Attribution regarding abetment to commit the offence and raising *lalkara* etc. is there.

Therefore, from the evidence on record, it appears that respondents No.2 and 3 namely Shamsher Kaur and Pal Kaur are involved in the commission of the offence and they should be tried together along with accused, who have already been challenged.

As regarding call details, at this stage, these call details have not been proved on record. Rather, complainant PW-1, eye witness to the occurrence has given the statement before the Court on oath. Similarly, the enquiry is yet to be proved in the defence by the accused and the evidence whatever relied upon by the enquiry officer, is yet to come on the record. The call details, which is a defence evidence, has yet to come on record and the prosecution is also to get opportunity to cross-examine the defence witness. Only then the Court after appreciation of evidence produced by both the parties can determine whether the defence evidence is to be relied upon or not. At this stage, whatever evidence has come before the Court, the Court is to consider the evidence for the purpose of summoning of the

additional accused.

In view of the above discussion, I find that the order dated 29.02.2016 passed by learned Addl. Sessions Judge, Patiala, is not as per law and the same is set aside and the application filed by the petitioner under Section 319 Cr.P.C. stands allowed.

Therefore, finding merit in the present petition, the same is allowed.

January 12, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No