

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

**CRM No.M-11444 of 2009 (O&M)
Date of Decision: August 02, 2019**

Kulwinder Kaur @ Kuljit Kaur

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.K.Goel, Advocate
for the petitioner.

Mr.Dhruv Dayal, Sr.DAG, Punjab
for the respondent-State.

Mr.L.S.Sidhu, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner Kulwinder Kaur @ Kuljit Kaur has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Bhuro Kaur, for quashing order dated 04.09.2008 passed by learned Judicial Magistrate Ist Class, Munak, whereby the petitioner along with other co-accused has been ordered to be summoned to face trial under Sections 302 read with Section 34 IPC in case FIR No.115 dated 17.08.2005.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared, filed respective replies and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

The brief facts of the case as noted down by the learned JMIC, Munak, in the impugned order dated 04.09.2009 are as under:-

“The facts in brief of present case are that Bhuro Kaur-complainant filed an application dated 08.04.2005 before SSP-Sangrur for holding an enquiry in respect of the death of his son namely Binder Singh who was her only son who was married with Kulvinder Kaur daughter of Himat Singh Rai Jakhal Road, Lehra, about three years back. A son was born out of their wedlock. About six months back, Kulvinder Kaur had left their house due to certain grouse and started residing at the house of her parents. On 03.04.2005, her son had received a telephone call from Kulvinder Kaur and he went to the house of his in-laws. On the same day, at about 7:30 p.m., Gaggi, who was son of the sister of the husband of the complainant told on telephone that he had received call from Binder Singh, in which, he disclosed that his wife and mother-in-law had administered him some poisonous substance by mixing in food. His condition was serious and he requested to reach in the house of his in-laws immediately.

It was further stated that the complainant was residing alone as petitioner's daughters were residing at village, Sangtiwala, P.S. Lehra. She informed her daughters on telephone, regarding message received by her. So, her daughters along with their husband reached at the house of the in-laws of Binder Singh at about 9 p.m. and found that Binder Singh was lying in a dead condition on a cot in the veranda of the house. His wife and mother-in-law Mohinder Kaur were resting on a bed in the room. When her daughters reached on spot, they started crying. Kulvinder Kaur and Mohinder Kaur did not disclose death of Binder Singh to any person in the neighborhood.

On the next day i.e. 04.04.2005 at about 7 a.m.,

the matter was reported to the police, who get the post mortem of the dead body done and thereafter, handed over the dead body to her. She was sure that Mohinder Kaur and Kulvinder Kaur had given a poisonous substance to Binder Singh, as a result of which, he had died. So, a prayer was made in the application to get the matter investigated from some Senior Official. The application was marked to DSP, vide endorsement No.2388/P on 20.04.2005 by holding that Balwinder Singh @ Binder Singh son of late Maghar Singh was murdered by Kulvinder Kaur and Mohinder Kaur on 03.04.2005 by administering him some poisonous substance in the lunch in connivance with Bahadur Singh son of Himat Singh and Gamdur Singh. He recommended for registration of the FIR so that the truth in the matter is revealed.”

FIR No.115 dated 17.08.2005 under Sections 302 and 120-B IPC was registered. The matter was investigated and cancellation report was submitted by the Officer-in-Charge of Police Station Lehra, which was returned back by the Court for further investigation and again, cancellation report was submitted. Learned JMIC, Munak, after going through the record, rejected the cancellation report and accused Kulwinder Kaur @ Kuljit Kaur-present petitioner and Mohinder Kaur were ordered to be summoned for the offence under Section 302 read with Section 34 IPC vide impugned order dated 04.09.2008.

The perusal of the impugned order passed by learned JMIC, Munak, nowhere shows that any illegality has been committed by learned Magistrate, while summoning the present petitioner and rejecting the cancellation report. Sound reasonings have been given and impugned order has been passed by discussing the material on the record.

Nothing has been argued, at the time of arguments, as to how the impugned order is illegal or perverse. Nothing has been argued which material on the record has been misread by the trial Court. Deceased Balwinder Singh @ Binder Singh had died due to poisoning. Kulwinder Kaur @ Kuljit Kaur is wife of Balwinder Singh @ Binder Singh. He died in the house. Complainant has levelled allegations regarding giving of poison. In the viscera, poison and liquor were detected and police reported that deceased had committed suicide by consuming poison with liquor.

Learned Magistrate, after discussing the statements of the witnesses etc., rejected the cancellation report and opinion of Investigating Officer. The Court also discussed the statement of Gurvinder Singh, to whom the deceased allegedly made a telephonic call. Call details have been got compared and the Court held that police has failed to give any cogent reasoning for disbelieving the statement of Gurvinder Singh. The Court also discussed minutely regarding mobile phone numbers of deceased as well as Gurvinder Singh. The Court held that letter dated 20.09.2005 is on record, which confirms that deceased had made a telephonic call from his mobile number 93158-18080 to Gurvinder Singh on his mobile number 94162-89439.

The medical evidence collected by police shows that it was the case of consuming 'aluminium phosphate' which was detected in the viscera and it is opined that this could be given in the meal.

The mere fact that earlier co-accused Mohinder Kaur, against whom the challan was presented, has been acquitted by learned Addl. Sessions Judge, Sangrur, is no ground to quash the summoning order passed against the present petitioner, who has already been declared proclaimed

offender. Otherwise also, I have gone through the above-said judgment passed by learned Addl. Sessions Judge, Sangrur dated 05.12.2017, in which, it is held that considering all the surroundings circumstances of this case, circumstances against the accused are doubtful and seem to have been based on mere suspicion. Learned Addl. Sessions Judge, Sangrur has acquitted the accused Mohinder Kaur by giving benefit of doubt to her. Learned Addl. Sessions Judge, Sangrur has nowhere held that case is false or witnesses have deposed falsely etc. Therefore, acquittal of Mohinder Kaur in a separate trial is no ground to quash the impugned summoning order.

Learned counsel for the petitioner cited judgment passed by this Court in *Sudo Mandal @ Diwarak Mandal vs. State of Punjab, 2011(2) RCR (Criminal) 453*. I have gone through the above-cited judgment and the same having distinguished facts, will not apply in the present case.

In view of the above discussion, I find that the impugned order dated 04.09.2008 passed by learned JMIC, Munak, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

However, nothing stated above, shall constitute my opinion, in any way, on merits of the case.

August 02, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No