

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

CRR-1692-2022 (O&M)
Date of Decision: 20.12.2022

BALJINDER SINGH @ GAGGU

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashish Gupta, Advocate
for the petitioner.

HARSH BUNGER, J.

CRM-49426-2022

This is an application for placing on record the Inquiry Report dated 17.03.2017 (Annexure P-6) conducted by Superintendent of Police (Investigation), Faridkot.

For the reasons recorded in the application, the same is allowed as prayed for. Inquiry Report dated 17.03.2017 (Annexure P-6) is taken on record, subject to all just exceptions.

CRR-1692-2022

The petitioner has filed the present revision petition seeking quashing of order dated 04.05.2022 passed by the Court of Sessions Judge, Faridkot, to the extent, whereby, the application under Section 319 of the

Code of Criminal Procedure, for summoning Jaskaran Singh son of Gurmail Singh and Lovepreet Singh @ Prince son of Gursewak Singh, has been dismissed.

The petitioner is an accused in case FIR No.85 dated 06.08.2016 (Annexure P-1) registered under Sections 307, 427, 148, 149 of the Indian Penal Code, at Police Station Jaitu, District Faridkot, wherein, the cross-version of the petitioner has also been recorded as DDR No.19 dated 08.08.2016 (Annexure P-2), registered under Section 307 of the Indian Penal Code and Section 27 of the Arms Act, at Police Station Jaitu, District Faridkot.

It is submitted that the challan in the said case was filed only against one Amritpal Singh, whereas, Rajpal Singh, Jaskaran Singh and Lovepreet Singh @ Prince, were declared to be innocent on the basis of an Inquiry Report dated 17.03.2017 (Annexure P-6).

During the course of trial, the present petitioner (Baljinder Singh @ Gaggi) was examined as PW-2 on 15.10.2018. On the basis of the testimony of petitioner (PW-2), the learned public prosecutor filed an application under Section 319 of the Code of Criminal Procedure, for summoning Rajpal Singh, Jaskaran Singh and Lovepreet Singh @ Prince, as additional accused as they were kept in column No.2 of the challan by the police. The said application was contested. The learned trial Court vide impugned order dated 04.05.2022 partly allowed the application under Section 319 of the Code of Criminal Procedure by summoning Rajpal Singh for commission of offence under Section 307 of the Indian Penal Code read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act.

However, the said application came to be dismissed qua Jaskaran Singh and Lovepreet Singh @ Prince.

While deciding the application under Section 319 of the Code of Criminal Procedure, the learned Sessions Judge, Faridkot, vide order dated 04.05.2022, has made the following observations :-

*“8. Thus, the complainant/injured Baljinder Singh specifically stated that Rajpal Singh, with an intention to kill him, fired with his gun towards him and he received fire arm injury on his right bicep. Specific attribution is also made to accused Amritpal Singh, who is already facing trial. There is no specific attribution to accused Jaskaran Singh and Prince alias Lovepreet Singh and only lalkara has been attributed to them. Thus the active participation of accused Rajpal Singh in the crime is specifically mentioned. Hence the application is **partly allowed** and only Rajpal Singh is ordered to be summoned as accused, for commission of offence punishable under Section 307 IPC read with Section 34 IPC and Section 27 of Arms Act for 23.05.2022.”*

Accordingly, the present revision petition has been filed.

Learned counsel for the petitioner has submitted that the trial Court has erred in law and facts in partly dismissing the application under 319 of the Code of Criminal Procedure, in respect of Jaskaran Singh and Lovepreet Singh @ Prince. It is submitted that the petitioner-complainant has specifically named Jaskaran Singh and Lovepreet Singh @ Prince in the FIR and even specific role has been attributed to them. It is contended that at the stage of summoning, the learned trial Court was required to see only the *prima facie* evidence and the Court was not required to go into the details of the allegations, accordingly, it is submitted that it was incumbent upon the learned trial Court to summon Jaskaran Singh and Lovepreet Singh @ Prince as additional accused to face trial.

I have heard learned counsel for the petitioner and have perused the paper book as well as impugned order dated 04.05.2022 passed by the Court of Sessions Judge, Faridkot.

After going through the paper book, it is manifest that in the DDR, the petitioner had made the following allegations :-

“We both of us were talking while standing in our house and then about 6/7.00 p.m., one Ritz Car bearing Registration No.PB-30H-3722 came and stopped on the main gate of our house and from the said car, Amritpal Singh alias Gaggi son of Jeet Singh, resident of Rori Kapura, armed with .12 bore double barrel gun and Rajpal Singh, resident of Village Hari Nau armed with .12 bore gun, Jaskaran Singh son of Gurmail Singh and Prince son of Gursewak Singh, resident of Village Wara Kishanpura came out of the car. Then out of them, Jaskaran Singh raised Lalkara and said that today they should be taught lesson for interfering in the tournament which has been arranged in the village and then Rajpal Singh fired directly towards me with his gun with intention to kill me and the said fire arm hit on the bicep of my right arm and thereafter, Amritpal Singh fired towards us with his gun and I saved myself by moving aside and out of which, some of the pellets hit on the left arm and stomach of Harcharan Singh.”

Thereafter, on the basis of Inquiry Report dated 17.03.2017 (Annexure P-6), Jaskaran Singh and Lovepreet Singh @ Prince, were found to be innocent on the basis of statements of persons recorded during inquiry stating that Jaskaran Singh and Lovepreet Singh @ Prince were not present at the place of occurrence.

Further, a perusal of testimony of the petitioner-complainant (Annexure PW-2) would show that primarily the allegations made in the DDR have been reiterated. However, the only improvement in the statement

seems to be regarding Lovepreet Singh @ Prince. The relevant portion of the testimony of the petitioner-complainant reads as under :-

“ On 06.08.2016, I was present in my house. Our neighbor Harcharan Singh @ Hero son of Jagdev Singh came to my house for taking spade. We both were talking in our house. It was about 6:00/7:00 PM. In the meantime, one Ritz car bearing Registration No.PB-30H-3722 came near the main gate of our house and stopped from which Amritpal Singh @ Gaggi son of Jeet Singh, resident of Rori Kapura armed with 12 bore DBBL gun, Rajpal Singh, resident of Hari Nau armed with .12 bore gun. Jaskaran Singh son of Gurmail Singh and Prince @ Lovepreet son of Gursewak Singh, resident of Wara Kishanpura alighted from the above said vehicle. Jaskaran Singh and Prince raised the lalkara for teaching us a lesson for interfering them in the tournament conducted in the Village Wara Kishanpura. Rajpal Singh with the intention to kill me fired with his gun and the fire hit on the bicep of my right arm, Amritpal Singh fired from his gun towards us. I saved myself by getting aside. Due to this fire, some pellets hit on the left arm and stomach of Harcharan Singh. On hearing our rousa, my brother Sukhwinder Singh came at the spot i.e. in my house. We all raised the rousa. Sukhwinder Singh witness the entire occurrence. We in order to save ourself also caused injuries to Amritpal Singh accused. On hearing the rousa, the people gathered at the spot. All of the accused fled away from the spot with their respective weapons.”

When the testimony of the petitioner (PW-2) is read, the same would show that so far as Jaskaran Singh and Lovepreet Singh @ Prince, are concerned, only a *lalkara* has been attributed. Rather a perusal of FIR shows that the *lalkara* is attributed only to Jaskaran Singh.

Hon'ble Supreme Court in *Rajesh & others v. State of Haryana, 2019 (3) RCR (Criminal) 133*, while relying upon its earlier judgment rendered in *Hardeep Singh v. State of Punjab, 2014 (1) RCR (Criminal) 623* held that examination-in-chief would mean "evidence" as per Section 319(1) Cr.P.C., however in the instant case, the only evidence in the form of examination-in-chief of Baljinder Singh is to the effect that Lovepreet Singh @ Prince and Jaskaran Singh gave *Lalkara*. Apart from *Lalkara*, no specific role or overt act has been attributed to either Lovepreet Singh @ prince or Jaskaran Singh.

As regards the allegation of '*lalkara*' is concerned, a Division Bench of this Court in *State of Punjab v. Darshan Singh 1992(3) RCR (Crl.) 381*, referred to various decisions on this point and observed as under :-

“ In Fatta v. Emperor, AIR 1931 Lahore 63, it was observed:-

“ When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. This method is more often after adopted in cases in which certain person is sought to be punished for constructive liability as regards the commission of crime of violence. It is highly unlikely that the accused would be so foolish as to proclaim his intentions before committing the attack, as by doing so he was sure to be thwarted by the persons present.”

In Garib Singh v. State of Punjab, 1972(3) SCC 418 : AIR 1973 Supreme Court 460, it was observed:-

“ Allegations of participation by giving lalkaras are sometime; made only to show additional overt acts so as to take in at least five persons and make out the ingredients of an offence under Section 147 IPC against all of them.”

In Amar Singh v. State of Haryana, 1974(3) SCC 81 : AIR 1973 Supreme Court 2221, it was observed :-

“If the appellant had shouted lalkaras it would be difficult to sustain the conviction.”

In Jainul Haque v. State of Bihar 1974(3) SCC 543 : AIR 1974 Supreme Court 45, it was observed:-

“ The evidence of exhortation is in the very nature of things a weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim.”

Considering the totality of circumstances and also the law on the issue regarding summoning of additional accused under section 319 Cr.P.C, this Court is of the considered view that the evidence brought on record by way of examination-in-chief of Baljinder Singh cannot be considered sufficient to urge that there is hope or prospect of conviction of Lovepreet Singh @ Prince or Jaskaran Singh, on that basis. Thus, no prima facie finding can be returned on the basis of examination-in-chief of Baljinder Singh, that there is sufficient evidence led before the Court which is stronger than mere probability of their complicity or that the evidence is more than prima facie as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if goes un-rebutted, would lead to conviction.

Accordingly, this Court does not find any illegality or perversity in the aforesaid conclusion recorded by learned Sessions Judge, Faridkot.

In view of the afore-mentioned facts and circumstances, the present revision petition is bereft of any merit and the same is accordingly

dismissed.

All pending miscellaneous application/s, if any, shall also
stands disposed of.

December 20, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No