

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

270

CRR-1358-2021 (O&M)

Date of Decision: 13.12.2022

SANTRA DEVI

... Petitioner

Versus

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sunil Saharan, Advocate
for the petitioner.

Mr. Pawan Kumar Jhanda, AAG Haryana.

Mr. Jitender Dhanda, Advocate and
Ms. Suman Sagar, Advocate
for respondents No.2 to 6.

HARNARESH SINGH GILL, J.(Oral)

Challenge in this petition is to the order dated 05.10.2021 passed by the learned Additional-Sessions Judge-cum-Judge Special Court, Hisar, vide which the application moved by the prosecution under Section 319 Cr.P.C. for summoning respondents No.2 to 6, as additional accused, was dismissed.

Learned counsel for the petitioner submits that the author of the present FIR is Santra Devi (the petitioner), who has lost her husband, namely, Satbir; that, though the complainant has raised specific allegations against respondents No.2 to 6 in the FIR, yet they have not been challaned and kept in column No.2 by the prosecution agency, for the reasons best known to them and that the complainant, while deposing

before the Court below as PW-1 has reiterated the entire version, as contained in the FIR and thus, there is sufficient material on record to summon respondents No.2 to 6 to face the trial. He further submits that respondents No.2 to 6 along with Shamsher Singh, have actively participated in the occurrence and given stick blows on the person of the deceased and thus, they are equally liable for the death of Satbir and deserve to be prosecuted, as per law.

In support of his contentions, the learned counsel for the petitioner relies upon the judgment dated 15.03.2021, passed by the Hon'ble Supreme Court in Sartaj Singh vs State of Haryana and Anr, 2021 (2) RCR (Criminal) 527.

On the other hand, while opposing the prayer made in this petition, learned counsel for respondents No.2 to 6 submits that the complainant-petitioner is the grand-mother of respondents No.2 to 4 herein, who were all minor and below the age of 18 years, at the time of the alleged occurrence; that respondents No.5 and 6 were alleged to be the friends of respondents No.2 to 4; that the complainant has named the whole family of Shamsher Singh, who himself is the son of the complainant and that the alleged occurrence took place at about 9:00 p.m. and there was no occasion for the minor children to accompany their father to inflict injuries on the person of their grandfather.

I have heard the learned counsel for the parties.

I do not find any infirmity in the impugned order passed by the learned Additional Sessions Judge, Hisar.

The present FIR was lodged by the complainant against her son, grandsons and granddaughter. The allegations against respondents No.2 to 6 are that they have inflicted injuries on the person of Satbir, which resulted into his death. As noticed above, respondents No.2 to 4 were minor and below the age of 18 years, at the time of the occurrence. The prosecution, after due investigation has filed the challan against Shamsher Singh and Raj Bala only, who are the son and daughter-in-law of the complainant and has rightly kept respondents No.2 to 6 in column No.2.

The learned court below, after taking into consideration the facts and circumstances of the present case, has rightly held that there was no occasion for respondents No.2 to 6, to accompany Shamsher Singh at 9:00 p.m. and inflict injuries on the person of Satbir.

The case law relied upon by the learned counsel for the petitioner, being distinguishable on facts, is of no help to him.

The Hon'ble Apex Court in Shiv Prakash Mishra vs State of Uttar Pradesh and another, 2019 (5) R.C.R. (Criminal) 946, has held as under:-

“The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C., 1973 is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C., 1973 should be exercised sparingly. As held in Kailash v. State of Rajasthan and another 2008(2) RCR (Criminal) 200: (2008) 14 SCC 51, the power

of summoning an additional accused under Section 319 Cr.P.C., 1973 should be exercised sparingly. The key words in Section are it appears from the evidence..... any person..... has committed in offence. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C., 1973 would be used by the Court.”

In view of the above, no ground is made out to interfere with the well reasoned order dated 05.10.2021 passed by the Court below.

Dismissed.

13.12.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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