

[2009] 8 S.C.R. 489

BALBIR SINGH

v.

STATE OF PUNJAB AND ANR.
(Criminal Appeal No. 963 of 2009)

MAY 8, 2009

**[DR. ARIJIT PASAYAT AND DR. MUNKUNDAKAM
SHARMA, JJ.]**

FIR – Cross version – Investigation – FIR by first informant – Cross version in FIR by petitioner's husband – Petitioner seeking investigation of cross version in FIR and entrustment of investigation to independent agency – On investigation, case of petitioner's husband found to be false – Direction by High Court that police was not required to register separate FIR into cross version set up but was to present entire investigation before the court to decide as to which version was correct – On appeal, held: Order of High Court modified – Direction issued to decide the case of informant who lodged FIR at first instance.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 963 of 2009.

From the Judgment & Order dated 28.04.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 33291-M of 2006.

U.U. Lalit, Nitin Sangra, Prashant Kumar and Ap & J Chambers for the Appellant.

K.K. Khurana, AAG, H.S. Phoolka A.K. Mehta, Kuldip Singh, Sunita Tiwari, A.P. Pandey and R.K. Pandey for the Respondents.

The Judgment of the Court was delivered by

A **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court. Respondent No.2 in the present appeal filed a petition seeking investigation of the cross version in FIR 43 dated 6.2.2006 registered at Police Station, City Abohar, in relation to the offences punishable under Sections 302, 307 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and for entrusting the investigation of the same to an independent agency. The aforesaid FIR was registered on the basis of statement made by the present appellant. The petitioner before the High Court i.e. present respondent No.2 is the wife of Gaganjit Singh, who had two brothers, namely, Gurdeep Singh and Gurjit Singh. Though, according to Balbir Singh, first informant, Gurjit Singh was killed in the emergency ward of Civil Hospital, Abohar, by a group of people which had come from the Truck Union, yet Gaganjit Singh claimed that his brother Gurjit Singh was killed by Balbir Singh, first informant and others on 6.2.2006 at 4.30 P.M. when Gaganjit Singh was first attacked and given injuries at the Truck Union and while being removed to the hospital by Gurjit Singh and others and had reached in front of the hospital where Balbir Singh was standing while carrying a pistol in his hand, which he used to fire at Gurjit Singh. As a result of the same, said Gurjit Singh died. The statement of Gaganjit Singh was recorded on 7.2.2006 when he was admitted in Civil Hospital, Malout, but in spite of the same, no action was taken against Balbir Singh and others for the murder of Gurjit Singh and for causing injuries to Gaganjit Singh. Instead final report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'Code') was submitted against Gaganjit Singh and Inderjit Singh for the murder of Baljit Singh. Therefore, it was prayed that appropriate legal action be taken into the cross version based on the statement of Gaganjit Singh and keeping in view the partisan attitude of the local police which was acting at the instance of local M.L.A., the investigation of the said cross-version be entrusted to an

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independent agency.

During investigation of the case the version given by Gaganjit Singh, the husband of respondent No.2 was found to be false. No injury was received by said Gaganjit at Truck Union, Abohar. In fact, it was Gaganjit Singh who had caused fire arm injury to Baljit Singh, brother of the present appellant-complainant of the case. After hearing the parties the High Court directed as follows:

“Although, the police was not required to register separate FIR into the cross version set up by Gaganjit Singh but the minimum it could do was to present the entire investigation before the Court and only then the Court could decide as to which of the two versions was correct. The police on its own could not decide that the murder of Gurjit Singh and causing of injuries to Gaganjit Singh was in the exercise of right of self defence of person by the complainant party. However, in the given circumstances the Court finds that the police ought to have registered an FIR against the offenders in relation to the murder of Gurjit Singh and causing of injuries to Gaganjit Singh so that if the same was to be later on cancelled, after its due investigation, the police would be required to submit the cancellation report in the appropriate court and obtain its order.”

3. It is the stand of the appellant that the direction issued to register the FIR on the basis of statements of Gaganjit Singh recorded on 7.2.2006 and proceed with the case in accordance with law is not sustainable. It is pointed out that in the FIR 43 of 2006 there was mention of incident as well as the retaliation. The statement of Gaganjit Singh was recorded on 7.2.2006 wherein he took the plea that the firing was by the appellant and Gurjit Singh had died. No FIR was lodged regarding the cross version. Charges have been framed on 15.6.2006. The complaint was filed by Gaganjit Singh on 21.8.2006. Cognizance has been taken qua the accusations

A and not in respect of the controversy.

B 4. In peculiar circumstances, we dispose of the appeal in modification of the impugned order with the direction that the complaint case shall be taken to its logical end. It needs no indication that the concerned Court shall deal with the matter on the basis of evidence laid before it. We make it clear that we have expressed no opinion on the merits of the case.

5. The appeal is disposed of accordingly.

N.J.

Appeal disposed of.