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**(2012) 03 P&H CK 0134**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CRM No. M-19896 of 2010**

Sukhjit Singh @ Ghudda

APPELLANT

Vs

State of Punjab and Anr

RESPONDENT

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**Date of Decision :** 23-03-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 319, 482  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 50  
Penal Code, 1860 (IPC) — Section 148, 149, 323, 341, 506

**Citation :** (2012) 03 P&H CK 0134

**Hon'ble Judges :** Mehinder Singh Sullar, J

**Bench :** Single Bench

**Advocate :** Mr.Sanjay Kaushal, for the Appellant; Mr.Jasdev Singh Brar, AAG Punjab for respondent No. 1. Nemo, for the Respondent

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## Judgement

Mehinder Singh Sullar, J.—The conspectus of the facts, culminating in the commencement, relevant for the limited purpose of deciding the sole controversy, involved in the instant petition and oozing out, from the record, is that, during the course of polling of general elections of Block Samiti and Zila Parishad of village Binjon, some altercation took place between the complainant and accused parties. ASI Satnam Singh and other accused Rajesh Kumar, Balbir Singh, Bakhtawar Singh, Devinder Singh, Sukhjit Singh @ Ghudda (petitioner), Naginder Singh and Avtar Singh were stated to have caused injuries to complainant Surinder Singh (respondent No. 2) (for brevity "the complainant") and threatened him with dire consequences. In the back ground of these allegations and in the wake of statement of the complainant, the present case was registered against the accused, vide FIR No. 96 dated 9.6.2002 (Annexure P1), on accusation of having committed the offences punishable under Sections 148, 323, 341 and 506 read with Section 149 IPC by the police of Police Station Mahilpur, District Hoshiarpur. The accused party was also stated to have received the injuries in the cross fight in the same occurrence. During the course of investigation by the DSP Garhshanker, ASI Satnam Singh, Sukhjit Singh and

Rajesh Kumar accused were found innocent. On the representation of the complainant, another inquiry was conducted by the Superintendent of Police, Nawanshahar and they were again found innocent. Thereafter, the police placed the names of petitioner and Rajesh Kumar in column No. 2 and submitted the challan/final police report in terms of Section 173 Cr.PC against other main accused. They were accordingly charge-sheeted for the indicated offences by the trial Court and case was slated for evidence of prosecution.

2. Sequelly, the prosecution produced certain witnesses. Thereafter, the complainant moved an application u/s 190 Cr.PC to summon the petitioner and Rajesh Kumar. Consequently, the trial Magistrate summoned them as additional accused, by way of impugned summoning order dated 15.9.2007 (Annexure P6). It was claimed that since the petitioner is residing in foreign country and it was brought to the notice of the Court, but still bailable warrants were issued against him, vide impugned order dated 17.9.2009 (Annexure P7). Subsequently, the Court declared him proclaimed offender, by means of impugned order dated 25.8.2010 (Annexure A1).

3. The petitioner did not feel satisfied and preferred the instant petition challenging the impugned orders (Annexures P6, P7 and A1) invoking the provisions of Section 482 Cr.PC.

4. As no body appeared on behalf of complainant-respondent No. 2 despite service, therefore, after hearing the learned counsel for the petitioner, learned State counsel, going through the record with their valuable help and after considering the entire matter deeply, to my mind, the present petition deserves to be partly accepted in this context.

5. At the very outset, the learned counsel contended with some amount of vehemence that once the petitioner was twice found innocent during the course of investigation and the police submitted the final police report against the other accused, who were accordingly charge sheeted by the trial Court, then, the application u/s 190 Cr.PC was not legally maintainable. The argument is that although there is no evidence against the petitioner, but still if some substantive evidence appears against him at the time of trial, then, he could at the most be summoned u/s 319 Cr.PC and not otherwise.

6. Faced with the situation, the learned State counsel has fairly acknowledged the legal position, as urged on behalf of petitioner and submitted that the impugned orders be set aside with the liberty to prosecution/complainant to file an application u/s 319 Cr.PC if need arises in this relevant connection.

7. In this view of the matter and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial, the instant petition is partly accepted. Consequently, the impugned orders (Annexures P6, P7 & A1) are hereby quashed in the obtaining circumstances of the case. Needless to mention here that the prosecution/complainant would be at liberty to move an application u/s 319 Cr.PC, which will be decided by the trial Court in

accordance with law.