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**(1981) 04 P&H CK 0002**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Vijay Kumar

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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**Date of Decision:** April 7, 1981

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 202
- Penal Code, 1860 (IPC) - Section 120B, 302, 34

**Citation:** (1981) CriLJ 838

**Hon'ble Judges:** Surinder Singh, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Surinder Singh, J.

This petition has been filed by one Vijay Kumar petitioner, through jail, with a prayer that this Court may in exercise of its inherent powers quash the order of summoning of the petitioner and the order of his commitment for being tried by the Sessions Court under Sections 302/34/120B of the Indian Penal Code. The petitioner moved a similar application to the learned Sessions Judge, Gurgaon, but the same was rejected on 12th of February, 1981.

2. The sole contention put forward on behalf of the petitioner is that before the Committing Court the complainant had given a list of 15 witnesses to be examined in the case, but the Committing Court committed the case to the Sessions Court, after recording evidence of six witnesses only. It is urged that in view of proviso to Section 202(2) of Code of Criminal Procedure, the Committing Court was bound to call upon the complainant to produce all his witnesses and examine them on oath before sending the case up to the Court of Session. The learned Counsel for the petitioner has cited *Raipal Sood v. Ravinder Nath Vohra* (1977) 79 P LR 674, a case which was referred to a Division Bench for decision whether it is incumbent upon

the Magistrate taking cognizance of an offence u/s 202 of the Code to record the evidence of all the witnesses, mentioned in the complaint, in a case triable by the Court of Session. The Division Bench after considering the matter recorded its findings on the above question in the following words:

The provisions of Sub-section (2) of Section 202 of the Code being mandatory the Magistrate was bound to record the evidence of all the witnesses relied upon by the complainant," The question now remains as to whether the complainant had actually relied upon all the 15 witnesses for the purposes of his case or not. In this behalf it is pertinent to refer to the following observation made by the learned ex officio Sessions Judge, Gurgaon, in his order dated 12th February, 1981:

I went through the various orders passed from time to time by the judicial Magistrate after examining four witnesses the counsel for the complainant submitted that he wants to examine only S. I. Kanwar Singh. The same order was repeated on the next date of hearing. Reference in this connection may be made to orders passed by the Judicial Magistrate on 22-9-79 and 27-11-79. There is no indication on the file that the complainant wanted to produce any more witnesses than were actually examined and that he was prevented from doing so. In the circumstances the only fair conclusion is that the complainant felt satisfied by examining only five witnesses.

The above observation does indicate that the complainant was quite content with examining six witnesses before the case was committed to the Court of Session. In this view of the matter it was not incumbent upon of Committing Magistrate to record the evidence of all the remaining witnesses, if the complainant himself did not rely upon them. The facts in this case are, there fore, distinguishable from those in Rai Pal Sood's case (1977) 79 PLR 674 (supra). The result is that the grievance made on behalf of the petitioner is not tenable and there is no ground for quashing the proceedings of the Committing Magistrate. For the reasons discussed above, Criminal Misc. No. 1399-M of 1981 is dismissed.

3. As regards Crl. Misc. No. 1400 of 1981 the same is an application for the grant of bail to the petitioner pending disposal of the case against him. It is not disputed that after the case was registered against the petitioner as a police case the investigation in the matter was carried out and it was found that the allegations against the petitioner were not substantiated. The case against the petitioner was therefore, cancelled. However, a private complaint was filed against him by the father of the deceased, who was the wife of the petitioner and who is said to have died as a result of burn iniuries. The date of occurrence in this case is 28th April, 1978 and the case against the petitioner is still hanging fire. It is not known when it will ultimately be concluded. In these circumstances it is a case fit for the grant of bail to the petitioner. The petitioner is, therefore, ordered to be released on bail to the satisfaction of Chief Judicial Magistrate, Faridabad, pending disposal of the case against him.

4. Criminal Misc. No. 1401 of 1981 is dismissed as having become infructuos?.