

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CRM-A-1111-MA-2018 (O&M)****Date of decision : 17.05.2023**

RAJENDER AND ANR.

-APPLICANTS/APPELLANTS

VERSUS

SATBIR AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Ajay Kumar Kansal, Advocate with
Mr. Shadab Ahmed, Advocate
for the applicants/appellants.

Mr. Arman Goyal, Advocate and
Mr. Naveen Kumar, Advocate
for the respondents.

SURESHWAR THAKUR, J.**CRM-21445-2018**

1. Considering the valid, and, good reasons, as meted in the application, for condoning the apposite delay of 702 days, therefore, the application is allowed.

2. Delay of 702 days in filing the appeal, is condoned.

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3. Through the instant application, the aggrieved complainants seek special leave from this Court, to appeal against the verdict of acquittal, as became recorded by the learned Judicial Magistrate First Class, Jind, (hereinafter referred to as the 'trial Magistrate' for short) on 30.03.2016, upon Criminal Complaint RBT No.50 of 2011.

FACTUAL BACKGROUND

4. The complainants instituted a complaint, constituting therein offences embodied under Sections 365, 323, 506, 364, 148, 149, and, 511 of IPC. Since the procedure regulating the trial of a private complaint becomes carried respectively in Sections 200 and 202 of the Cr.P.C. Resultantly, in terms of the substantive provisions, as carried in Section 200 of the Cr.P.C., the learned trial Magistrate, thus undertook the exercise of examining the complainant(s) and their witnesses, thus as preliminary evidence, in respect of the above offences, as, carried in the complaint.

5. A perusal of the order sheets, as occurs, on the records of the learned trial Magistrate, reveals that the complaint became entered in the relevant register on 16.11.2011, and, on that day, an order became recorded by the learned trial Magistrate rather for the listing of the said complaint on 20.1.2012, thus for the preliminary evidence being adduced by the complainants. On 20.1.2012, as no preliminary evidence appeared on behalf of the complainants, before the learned trial Magistrate, therefore for the afore purpose, the complaint became ordered to be listed on 26.03.2012. On 26.3.2012 also, for absence of preliminary evidence, thus constrained the learned trial Magistrate to adjourn the complaint, for the above purpose, to 4.6.2012. On 22.8.2012, one of the complainants' witnesses appeared and recorded his statement as preliminary evidence, but for the remaining preliminary evidence of the complainants becoming adduced, the learned trial Magistrate ordered for the complaint becoming listed on 5.10.2012. On 5.10.2012 also, only one of the complainants' witnesses was present as preliminary evidence, and, thus his statement became recorded as such. On the

said date, but for the examination of the remaining preliminary evidence, the learned trial Magistrate ordered for the complaint being listed on 26.10.2012. However, on the said date also, no preliminary evidence of the complainants was present, therefore the complaint became listed, on 01.12.2012, for adduction of the remaining preliminary evidence. On 01.12.2012, only one of the complainants' witnesses was present, and as such, his testification became recorded, whereas, since the other witnesses occurring in the list of complainants' witnesses, rather were not present, but yet on a statement being made on the said date, by the learned counsel for the complainant, who then adduced documents Ex.C1 to Ex.C4, and, Mark A, thus as preliminary evidence, thereby the complainants' preliminary evidence became ordered to become closed. Thereafter, the learned Magistrate ordered that the complaint be listed before him, on 03.01.2013, for considering, whether on the basis of the adduced preliminary evidence, the accused are required to be summoned.

Proceedings post receiving of preliminary evidence

6. When the complaint became listed on 02.12.2013, for arguments being addressed for causing the summoning of the accused, but on the basis of the evidence, as became prior thereto adduced by the complainants, the learned trial Magistrate proceeded to then make a summoning order, upon, the accused named in the complaint. Through an order drawn on 25.02.2016, the learned trial Magistrate made an order for adduction of pre-charge evidence, but on the very same day, two of the complainants' witnesses, who were present, became examined in chief, but for cross-examinations being made upon the said witnesses, the learned trial Magistrate adjourned the complaint to 02.03.2016. On 02.03.2016, only one of the complainants' witnesses, was

present, who became examined in chief, but his cross-examination became deferred for 14.03.2016, with a further direction to the complainants, to adduce the remaining pre-charge evidence, besides with another direction, that the said date shall be the last date assigned for the makings of cross-examinations upon the complainants' witnesses, who had earlier made their respective examinations-in-chief. On 21.3.2016, on the statement of the learned counsel for the complainants, the learned trial Magistrate ordered for the closure of the pre-charge evidence, but after some documents becoming tendered. Ultimately, the matter was listed on 28.03.2016, for consideration on charge. However, when the complaint was listed on 30.03.2016, for charges in respect of the offences embodied in the complaint, thus being drawn against the accused, who had been summoned through the summoning order (supra), thus the learned trial Magistrate, after considering the prior thereto evidence, both oral as well as documentary, as became adduced by the complainants, proceeded to discharge the accused of the offences, as carried in the complaint. The making of the order (supra), by the learned trial Magistrate, leads the complainants to claim special leave being granted to them, for making an appeal thereagainst, before this Court.

Reasons for declining special leave to appeal. Moreover, analysis of the provisions of Sections 245, and, 246 of the Cr.P.C.

7. A reading of the impugned order discloses, that on a consideration of the oral as well as documentary evidence, thus the impugned order of discharge was made. Moreover, a closest reading of the impugned order unravels, that the complainants' witnesses, who had, at the pre-summoning stage, thus made their respective testifications, in support of the

offences carried in the complaint, yet made re-testifications. Importantly, the above re-testifications occurred, yet after the accused making their respective appearances before the learned trial Magistrate, on theirs being summoned, but also, thus then became assigned to the accused, an opportunity, to make cross-examinations upon the complainants' witnesses, who post the summoning order made re-testifications.

8. Though in terms of the provisions, as carried in Section 245 Cr.P.C., provisions whereof become extracted hereinafter, it is open to the learned trial Magistrate to, on the basis of the evidence adduced before him, make a well reasoned objective finding, planked on the basis of such adduced evidence, whether no case is made out against the accused. The learned trial Magistrate, on such drawn objective reasons, thus becomes empowered, to make an order of discharge qua the accused named in the complaint. Therefore, it also appears, from a reading of the impugned order, that the said provision became resorted to by the learned trial Magistrate, in his making the impugned order of discharge upon the accused.

“245. When accused shall be discharged.—

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

9. Be that as it may, the said recorded objective reasons, leading the

learned trial Magistrate to make an order of discharge, upon the accused, are required to be so made, thus in terms of sub-section (1) of Section 245 of the Cr.P.C. The said made objective reasons are required to embody an objective finding, that such adduced evidence, if unrebutted, thus imperatively leading to an order of conviction being made upon the accused. Therefore, the makings of a convincing objective reason, is but imperative, besides such objectively recorded reasons rather but pinpointedly are to relate to such adduced evidence, before the learned trial Magistrate, if thus having remained unrebutted, thereby warranting the makings of conviction upon the accused, thus appearing before him, in pursuance to a summoning order, being made upon them, and who then evidently take not to rebut such adduced preliminary evidence. Therefore, at the said stage, the accused may take the option of plea-bargaining, and/or, may tacitly plead guilty, for as such, conviction and mitigating sentence(s) being made upon them. The above would happen only if such adduced, oral or documentary evidence, adduced as such at the pre-summoning stage, or, as preliminary evidence, thus making candid exculpatory echoings. Contrarily, if the such adduced preliminary evidence, but imperatively at the pre-summoning stage, does make inculpatory echoings against the accused, thereupon obviously the accused would not normally permit the foreclosing of an opportunity to them, as assigned in terms of sub-section (4) of Section 246 of the Cr.P.C. Though the said stage would occur post the drawing of an order of discharge, or, would occur on the learned trial Magistrate, on the evidence adduced before him, at the pre-charge stage, making an objective conclusion, that a charge in respect of the offences carried in the complaint, thus is imperatively required to be drawn against the

accused. Subsequently, in the situation of the accused pleading not guilty, thereby the mandate of sub-section (4) of Section 246 of the Cr.P.C. would come to the forefront, thus leading the accused to ask for cross-examinations, being made upon the complainants' witnesses, who had sworn their respective testimonies, but as preliminary evidence, and thus at the pre-summoning stage.

“246. Procedure where accused is not discharged.—

(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.”

I. Any departure from the mandate (supra) made by the learned trial Magistrate, rather his making the order of discharge within the domain of sub-section (2) of Section 245 of the Cr.P.C. is tenable, as there is no prejudice to the complainant or to the accused, as both were assigned an opportunity to lead afresh evidence, post summoning the accused and were permitted to cross-examine such re-adduced complainants' evidence, post the making of summoning order.

10. However, in the factual scenario prevailing in the instant case, though the pre-summoning preliminary evidence, did contain incriminatory echoings, against the accused. Therefore when obviously, the said adduced preliminary evidence, thus normally could not be said to be asked to be unrebutted, by the accused, as in the above event, the learned Magistrate may have concluded, that the said inculpatory evidence thus remaining unrebutted, thereby warranting a verdict of conviction being drawn against the accused, whereby he may have relented to make a valid order of discharge, upon, the accused. Therefore, it appears, that the opportunity to adduce rebuttal evidence, to the preliminary evidence, or, to the pre-charge evidence, necessarily would occur only through cross-examinations being permitted to be made upon the complainants' witnesses, who not only swore their testifications, at the pre-summoning stage, but also re-swore their testifications at the post-summoning stage.

11. Though the learned trial Magistrate appears not to make further progresses to a stage, whereby he may have well resorted to the mandate of Section 246 of the Cr.P.C., whereby he could have well drawn charges against the accused, and thereafter, on the accused pleading not guilty thereto, he may have asked the accused to cross-examine the pre-charge evidence of the

complainants.

12. However, for the reasons to be assigned hereinafter, the order of discharge, even if it is founded upon both documentary as well as oral evidence, besides even if it is made without the learned trial Magistrate adopting the procedure contemplated in Section 246 of the Cr.P.C., yet the said order of discharge is a validly made order. The prime reason for making the above conclusion becomes secured from the factum, that post the summoning order, being made upon the accused, the complainants' evidence re-appeared for re-making their re-testifications in their respective examinations-in-chief, and, also thereafter the learned trial Magistrate, thus permitted the accused to make cross-examinations upon them. Therefore, the above adopted recourse by the learned trial Magistrate appears to facilitate the accused to, at the earliest, thus take the opportunity to rebut the efficacy of the pre-summoning preliminary evidence, besides to ensure, that a fair and just enquiry is made into the complaint.

13. Moreover, even if the oral evidence of the complainants, was asked to re-step into the witness box, upon the accused making their respective appearances, before the learned trial Magistrate, and, when the learned trial Magistrate, thus permitted the accused, to also make cross-examinations upon them. Resultantly, thereby the above recourse was obviously, in terms of sub-section (2) of Section 245 of the Cr.P.C., which but is a proviso to the preceding therewith sub-section (1), whereby the learned trial Magistrate becomes empowered to, upon the re-adduced oral evidence, post the making of summoning order, thus assign an opportunity to the accused, to cross-examine the complainants' witnesses. Thus, the employment

of the above course, by the learned trial Magistrate, is in terms of the statutory coinages carried therein, inasmuch as, it secures flawlessness from the statutory empowerment vested in the learned trial Magistrate, to discharge the accused at any previous stage, or, at a stage prior to the procedure engrafted in Section 246 of the Cr.P.C., thus becoming recoured.

14. However, the limitation to the exercise of the said empowerment is, on the learned trial Magistrate yet recording reasons, that he considers the charge to be groundless. Therefore, imparting a pragmatic orientation to the above statutory coinages, the imperative sublime import thereof, is that, if the learned trial Magistrate well considers, he can through able reasons, thus founded upon tangible material, thereby make an order of discharge in respect of the complaint offences. The tangible material on record, to support such reasons, for the makings of an order of discharge, upon the accused, even prior to his recouring the mandate of Section 246 of the Cr.P.C., is imperatively to be comprised, in the opportunity for cross-examinations, upon, the re-adduced oral evidence of the complainant, but post summoning stage, thus becoming assigned to the accused. In consequence, the above provision also provides a protective shield, to the accused, against theirs being unnecessarily dragged into the harassment, of a prolonged trial becoming entered into the complaint offences, which would occur, on employment by the learned trial Magistrate, of the procedure engrafted in Section 246 of the Cr.P.C. Therefore, bearing in mind, the above holistic purpose behind the engraftment of the statutory provision (supra), the learned trial Magistrate, has thus made the order of discharge, and, which cannot be faulted, but merely on the premise, that he has made the said impugned order of discharge, without his recouring the

mandate of Section 246 of the Cr.P.C., as then obviously there would be an obviably elongated delay in the conclusion of the regular trial of the complaint cases, thus becoming made by the learned trial Magistrate.

15. The resultant effect of the above discussion is, that in the learned trial Magistrate drawing succor from the provisions of Section 245 of the Cr.P.C., appears to do so, not to cause prejudice to either the complainant, or, to accused, but to ensure, that a fair opportunity to each is granted, for adducing evidence in support of the offences, carried in the complaint, and/or, to assign through cross-examination(s) of such adduced oral evidence, thus an able privilege to the accused. The above is meant to curtail the requirement of the accused, in pursuance to theirs not pleading guilty to the charge, as become framed against him, in pursuance of the procedure contained in Section 246 of the Cr.P.C., rather becoming adopted by the learned trial Magistrate, theirs thus being put to the harassment of an elongated trial, becoming entered into, in respect of the complaint cases, by the learned trial Magistrate.

16. Any argument that the above departures as purportedly made by the learned counsel for the applicants, thus staining the order of discharge, does not hence carry any vigour, and, is thereby rejected.

II. The impugned order is not liable to be faulted on the basis of the analysis made by the learned trial Judge, of the oral as well as documentary evidence, as became adduced before him.

17. Even on merits, a reading of the discussion, as made by the learned trial Magistrate, thus in the impugned order of discharge, reveals, that PW3, in his cross-examination rather stated, that when information was received by him, at the relevant time, it was unknown as to between whom the

quarrel had occurred, that too despite PW4 identifying Ex.PW4/A, whereas, rather in his cross-examination he stated, that the said exhibit was not prepared in his presence.

18. The effect of the above, is that, as aptly concluded by the learned trial Magistrate, no credence was assignable to the averments carried in the complaint. Furthermore, PW5, the medical practitioner, who in his examination-in-chief, though ensured the making of an exhibition mark PW5/C, and, PW5/D, on the apposite MLRs concerned, but when in his cross-examination stated, that he had not given any opinion, about the nature of injuries, thereby the lack of the detailings in the MLR, about the injuries being either incised or lacerated, and/or, theirs carrying any relation with the alleged users of the incriminatory weapons of offence, on the respective persons of the victims, by the accused. Resultantly, the above begets a conclusion, that the user of weapons of offence, thus resulting in the injuries, cannot be aptly inferred to be so caused with such incriminatory weapons, which are otherwise stated to be blunt weapons.

19. PW7, a purported eye witness, has, in his cross-examination, rather made a voicing, that he was a hearsay witnesses, thereby his testimony, as aptly concluded by the learned trial Magistrate, was not amenable for any credence being assigned thereto. There are rife inter se contradiction, inter se the averments made in the complaint, with the ones made in Ex.PW/B. The said inter se contradictions become comprised in the factum, that in the complaint, it has been scribed, that all the accused had put the complainant No.1 in a Maruti car, but with intention to kill him, whereas, a contradiction thereto Ex.PW/B rather articulates that both the complainants had been

kidnapped by the accused. Even otherwise, in MLRs Ex.PW5/B and Ex.PW5/C, the injuries allegedly suffered by the complainants are not so grave, nor critical, so as to suggest, that as averred in the complaint, and, as also testified by the complainants, that they were assaulted with Bindas and iron weapons, especially when the user of the said weapons of offence, thus more critical and serious injuries, than as become enunciated in Ex.PW5/B, and, Ex.PW5/C, rather were required to be occurring on the respective persons of the complainants. Contrarily, when the said grave injuries are not mentioned in the above MLRs. Therefore, it but obviously appears, that both the averments in the complaint as well as the testifications of the complainants thus are contrived and invented, and, to which no credence can be assigned.

20. Importantly, since the motive for the quarrel, as evidence in respect of the motive of the quarrel has surged forth, inasmuch as, theirs being rivalry amongst the accused and the complainants. Therefore since the evidence for motive of quarrel has emerged, thereby also it appears, that a prima facie exaggerated, as also a false version rather becoming averred in the complaint, besides an alike manner of testifications being made by the complainants. It appears that, during the enquiry being made into the complaint, the learned trial Magistrate asking for a report from the DSP concerned, and, who however, in his report of 13th June 2011, revealed, that no quarrel had taken place on the fateful day, and, at the crime site. Therefore also, the impugned verdict of discharge does not appear to be made without the keenest application of mind, to all the evidence as became adduced before the learned trial Magistrate.

FINAL ORDER

21. For all the above stated reasons, this Court finds that the impugned order of discharge is well merited, and, it does not require any interference. Resultantly special leave to appeal, as claimed in the application at hand, thus to appeal against the impugned verdict, rather is declined to the applicants, thereby maintaining and upholding the verdict of acquittal (supra).

(SURESHWAR THAKUR)
JUDGE
17.05.2023
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No