

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-13537-2015

Date of decision: 28.04.2015

Rajender and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Tapan Kumar Yadav, Advocate for the petitioner.

R.P. NAGRATH, J.

The petitioners are two accused out of six accused persons facing trial before the learned trial Court in FIR No. 430 dated 09.11.2013 registered under Sections 147/148 and 323 read with Section 149 of the Indian Penal Code (IPC) at Police Station Badshahpur, District Gurgaon. They have invoked jurisdiction of this Court under Section 482 Cr.P.C. seeking to quash the order dated 08.05.2014 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Gurgaon framing charges against the petitioners and co-accused for offences under Sections 323 read with Sections 148 and 149 IPC and also the order dated 03.03.2015 (Annexure P-6) passed by the learned Additional Sessions Judge, Gurgaon in a revision against the said order. The revision was filed by all the six accused persons whereas the instant petition has been

filed by two of them.

2. Learned counsel for the petitioners submits that because of the dispute of passage a false case was registered by the complainant by taking advantage of natural death of Ramanand.

3. In support of this contention, reliance was placed upon the opinion of medical board constituted for finding the cause of death of the deceased. This is review opinion by the board of doctors and it was found that cause of death was due to shock following pre-existing significant ventricular hypertrophy (thickened heart chambers and walls) and arrhythmia causing sudden cardiac death which is the natural cause of death.

4. I have heard learned counsel for the petitioners and carefully perused the orders passed by the Courts below and also the paper-book.

5. The incident took place on 09.11.2013 and FIR was registered on the same day on the statement of Kalu Ram, brother of deceased Ramanand. It was stated that the deceased had tried to stop his neighbor Rajender-petitioner No. 1 from encroaching upon the public highway. Ramanand was attacked by 8-9 named persons and it was alleged that they were accompanied by 8-10 other boys. The version of prosecution was that Dharmesh, the co-accused had caught-hold of Ramanand and Deepak-petitioner No. 2 (son of petitioner No. 1) hit him with an iron rod on the back side of head of Ramanand (deceased). All the said persons are stated to have given blows on the person of Ramanand. FIR was registered under Sections 302/450 read with Section 149 IPC but ultimately, the challan was presented for the offences for

which the charges have been framed by the learned trial Court. Learned counsel for the petitioners submits that Civil Suit No. 81 dated 04.07.2014 titled "Chandrawati Vs. Kallu and others" with regard to property in question is also pending between the parties and obviously that suit was filed after the present incident. It has been observed by the learned Revisional Court that the present is not a case of no injury at all seen on the person of deceased because in inquest report there is a specific mention of detection of a hidden injury on the rear side of the head. The victim was an aged person and because of the incident he may have suffered the cardiac arrest but that is the question to be decided during the course of trial.

6. There was no delay in lodging the FIR. The investigation was completed and ultimately, the challan was presented after recording the statements of eye-witnesses of the occurrence. Those who have been found innocent were not sent up for trial.

7. The weight to be attached to the review opinion with regard to cause of death of Ramanand would be a question to be discussed during the course of trial. The case cannot be thrown away at the threshold simply on the basis that the doctors have found that death was not due to result of said injury but by cardiac arrest.

8. The matter has been examined by the Revisional Court in right perspective and the order passed by the Revisional Court cannot be termed as illegal or perverse calling for interference of this Court. The challenge to the orders passed by the Courts below would be virtually in the nature of second revision which is not permissible as the

facts available on record were considered by the Courts below while framing charge. The petitioners have not attached the challan report under Section 173 Cr.P.C. with the instant petition or even the statements of eye-witnesses recorded under Section 161 Cr.P.C. to suggest that there was absolutely no evidence against the petitioners with regard to the incident for which FIR was registered against them.

9. Dismissed.

April 28, 2015

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**(R.P. NAGRATH)
JUDGE**