

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-6786 of 2014
Date of decision : 16.01.2015

Ombir

...Petitioner

Versus

Desh Raj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. J.S. Hooda, Advocate
for respondents No.1 to 8.

Mr. Pawan Garg, AAG, Haryana.

JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside the order dated 03.10.2013, passed by learned Judicial Magistrate Ist Class, Palwal and the order dated 03.01.2014 passed by learned Additional Sessions Judge, Palwal.

It is contended that initially the FIR was registered under Sections 148, 149, 323, 452, 506 IPC, but the challan was presented under Sections 148, 149, 323 and 506 IPC. He further contended that during trial five prosecution witnesses including the complainant-petitioner were examined, who stated that the accused persons had entered into the house of the complainant and inflicted injuries to them. Therefore, the dismissal of

the application moved by the petitioner for amendment/addition of charge under Section 452 IPC has wrongly been rejected by the learned Courts below.

On the other hand, learned State Counsel submits that the matter was investigated thoroughly and the statements of number of persons including those present at the spot were recorded and it emerged that the quarrel took place at a plot and not inside the house as projected by the petitioner-complainant. Thus, on the basis of this evidence charge under Section 452 IPC was not framed by the JMIC.

Heard.

From the perusal of the impugned orders, it emerges that ASI Devinder Singh, the Investigating Officer, while appearing as PW-4, has admitted in his cross-examination that the occurrence took place in a vacant plot. The charge in this case was framed on 04.10.2010, whereas the application for framing additional charge has been moved by the complainant-petitioner at a belated stage i.e. 18.12.2012. The case is at the stage of defence evidence. From the reply filed on behalf of the State, it is apparent that out of total ten prosecution witnesses, eight have already been examined. Therefore, the alteration of charge, at this belated stage would result a de novo trial which could not be allowed, at this stage. In this view, the matter, this Court finds no merit in the present petition and the same is, hereby, dismissed.

16.01.2015
ashok

(JITENDRA CHAUHAN)
JUDGE