

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

**Crl. Revision No. 2136 of 2013
Date of Decision: 18.8.2015.**

Charanjit Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Lalit Garg, Advocate
for the petitioner.

Mr. J.S.Sekhron, AAG, Punjab.

Respondent No. 2 in person.

.....

SABINA, J.

Petitioner has filed this petition under Section 397 of the Code of Criminal Procedure, 1973 challenging the order dated 7.5.2013 (Annexure P-4) whereby charge was ordered to be framed against the petitioner under Section 307 of the Indian Penal Code, 1860 ('IPC' for short) and the order dated 5.10.2012 (Annexure P-3) whereby case was committed by the Trial Court to the Sessions Court.

Learned counsel for the petitioner has submitted that in the present case, challan was presented against the petitioner qua commission of offence punishable under Section 324 IPC. Complainant moved an application before the Trial Court that offence under Section 307 IPC was liable to be added and the case be committed to the Court of Sessions for trial. The said

application was dismissed by the Trial Court vide order dated 5.7.2004 (Annexure P-1). The order passed by the Trial Court was upheld by the Court of Revision vide order Annexure P-2. The Court of Revision while dismissing the revision petition filed by the complainant, had observed that in case at any stage the Trial Court came to the conclusion that the petitioner had committed offence punishable under Section 307 IPC, then the Trial Court shall proceed further accordingly. However, there was no fresh evidence before the Trial Court to proceed against the petitioner under Section 307 IPC after the passing of the orders Annexure P-1 and P-2.

Learned State counsel, who is assisted by respondent No. 2, on the other hand, has opposed the petition.

In the present case, prosecution case was set in motion on the basis of the statement of the complainant. After completion of investigation and necessary formalities, challan was presented against the petitioner qua commission of offence punishable under Section 324 IPC. Charge was framed against the petitioner by the Trial Court qua commission of offence punishable under Section 324 IPC. Thereafter, the complainant moved an application before the Trial Court that the case be committed to the Court of Sessions as the petitioner had committed offence punishable under Section 307 IPC. The said application was dismissed by the Trial Court vide order dated 5.7.2004 (Annexure P-1) and it was held that the petitioner had only committed the offence punishable under Section 324 IPC and had been charged accordingly. At the time of passing of the said order, the Trial Court had duly considered the statement of

PW-1 Dr. V.K. Aggarwal. It has transpired during the course of arguments that the examination-in-chief as well as cross-examination of PW-1 Dr. V.K. Aggarwal was conducted on 2.4.2002. The order passed by the Trial Court was upheld by the Court of Revision.

Thereafter the complainant again moved an application that the case be committed to the Court of Sessions as offence under Section 307 IPC had been committed by the petitioner. The Trial Court vide order dated 3.10.2012 allowed the said application, although, there was no fresh evidence on record before the Trial Court to come to a conclusion that the petitioner was liable to be tried qua commission of offence punishable under Section 307 IPC after the passing of the orders Annexures P-1 and P-2. Hence, in the facts and circumstances of the present case the Trial Court fell in error while committing the case to the Court of Sessions as there was no fresh material on record to enable the Trial Court to come to a conclusion that the petitioner had committed an offence punishable under Section 307 IPC after the passing of the order Annexure P-1 by the Trial Court and as upheld by the Court of Revision vide order Annexure P-2.

Accordingly, this petition is allowed. Impugned orders dated 5.10.2012 (Annexure P-3) and in consequence thereto dated 7.5.2013 (Annexure P-4), are quashed.

**(SABINA)
JUDGE**

August 18, 2015
Gurpreet