

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.1843 of 2015
Date of Decision : 27.8.2015

Harjinder Singh @ Ninder Singh and anotherPetitioners

Vs.

State of PunjabRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. S.S. Sidhu, Advocate for the petitioners.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.
Mr. Vivek Goyal, Advocate for the complainant.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Present criminal revision is directed against the order dated 1.5.2015 passed by the learned Additional Sessions Judge (Fast Track Court), Bathinda, framing charge against the petitioners under Sections 307/324/34 IPC.

Notice of motion was issued.

Learned counsel for the petitioners submits that it was a case of version and cross version. Complainant-Mewa Singh was servant of Kulwinder Singh. The head injury on the person of the complainant-injured was found by the doctor to be simple in nature. In fact, initially the case was registered under Section 324/34 IPC on 18.3.2014. Thereafter, offence under Section 307 IPC was added 12 days later i.e. on 1.4.2014 on the basis of simple injury, which was

not at all warranted. He further submits that in view of the material fact that the injuries were found simple by the doctor, there was no scope for addition of offence under Section 307 IPC. Further, the learned trial court fell in serious error of law, while framing the charge under Section 307 IPC, which runs counter to the expert medical opinion given by the doctor. In such a situation, there was no scope for the learned trial court to come to a conclusion that, prima facie, offence punishable under Section 307 IPC was made out. Since the impugned order was otherwise also a cryptic order, the same is not sustainable in law. He next contended that petitioner no.2 suffered three injuries at the hands of complainant-party, out of which one injury was declared as grievous, because of which offence under Section 326 IPC was added on 26.3.2014, vide DDR No.14 in the cross version case, got registered by Ranjit Singh-petitioner no.2, vide DDR No.28 dated 18.3.2014. He prays for setting aside the impugned order, however, only to the extent of charge under Section 307 IPC, by allowing the present petition.

On the other hand, learned counsel for the State submits that the learned trial court committed no error of law, while framing the charge under Section 307 IPC. Petitioners caused very many injuries on the person of the complainant. He submits that although it was a matter of record that injuries on the person of the complainant were found simple in nature, yet the impugned order framing the charge, including the offence under Section 307 IPC deserves to be upheld. He prays for dismissal of the present petition.

Learned counsel for the complainant also opposes the present petition contending that intention of the petitioners-accused, while causing more than one injuries on the person of the complainant would show that the learned trial court has rightly framed the charge under Section 307 IPC. In support of his

contention, he places reliance on a judgement of the Hon'ble Supreme Court in **State of M.P. Vs. Kashiram and others**, 2009(4) SCC 26 and another judgement of this court in **Beni Parshad and others Vs. State of Haryana and another**, 2007 (1) RCR (Crl.) 759. He also prays for dismissal of the present petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the peculiar facts and circumstances of the case, noticed herein above, present revision petition deserves to be allowed, for the following more than one reasons.

Before proceeding further, it would be appropriate to refer to the impugned order dated 1.5.2015 and the same reads as under :-

“ Heard. From the final report under Section 173 Cr.P.C., a prima facie offence punishable under Sections 307/324/34 IPC are made out against both the accused and charge has been framed accordingly, to which both the accused pleaded not guilty and claimed trial. Now PWs be summoned for 18.5.2015.”

A bare perusal of the above said impugned order would show that there is not even a passing reference of the expert medical opinion given by the doctor about the injuries suffered by the complainant. It is a matter of record that while giving his opinion on 1.4.2014, the doctor declared the head injury to be simple in nature and on the basis of this very opinion of the doctor, offence under Section 307 IPC was added, vide DDR No.25 dated 1.4.2014 in the FIR No.20 dated 18.3.2014, which was initially registered under Sections 324/34 IPC.

Even if the investigating agency has added the offence under Section 307 IPC,

the learned trial court was under legal obligation to apply its judicious mind, while framing the charge. However, the learned trial court failed to do so. It is so said, because in the given fact situation of the present case, no offence under Section 307 IPC was made out, because of which charge under Section 307 IPC, cannot be sustained.

The genesis of the occurrence was of releasing the water in the field. Petitioner-Ranjit Singh also suffered as many as three injuries on his person in this very incident, out of which one has been declared grievous in nature, because of which offence under Section 326 IPC was added on 26.3.2014, vide DDR No.14 in the cross version case, recorded on the statement of the petitioner-Ranjit Singh, vide DDR No.28 dated 18.3.2014. This seems to be the reason that the complainant side got added the offence under Section 307 IPC in the FIR at a later point of time i.e. on 1.4.2014, vide DDR No.25, because initially the FIR was registered only under Sections 324/34 IPC. However, the learned trial court, at the time of framing of the charge completely brushed aside the above said material aspect of the matter, which leaves the impugned order unsustainable in law and the same is liable to be quashed, for this reason also.

Learned counsel for the petitioners has been found justified in contending that in view of the expert medical opinion declaring the injury on the person of the complainant as simple in nature, there was no scope, whatsoever, to add the offence under Section 307 IPC in the FIR, initially recorded under Sections 324/34 IPC. Even if the police has added this offence under Section 307 IPC, it was a bounden duty of the court to see, as to whether even a prima facie case would be made out for the offence punishable under Section 307 IPC, in the peculiar facts and circumstances of the case. The learned trial court has failed to appreciate this material aspect of the matter in the correct perspective,

while passing the impugned order, because of which the charge under Section 307 IPC cannot be sustained, for this reason as well.

During the course of hearing, when a pointed question was put to learned counsel for the State as well as to learned counsel for the complainant, as to how the three injuries on the person of petitioner no.2 namely; Ranjit Singh, including a grievous injury were explained by the prosecution or the complainant, they had no answer and rightly so, because there is nothing on record to explain any of the injuries suffered by petitioner no.2. In this view of the matter, it can be safely concluded that the learned trial court fell in serious error of law, while passing the impugned order and the same cannot be sustained.

So far as the judgements relied upon by learned counsel for the complainant are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgements, none of them has been found to be of any help to the complainant, the cited judgements being distinguishable on facts. The glaring distinguishable feature is suffering three injuries by petitioner no.2, including a grievous injury, which cannot be ignored in the present case. Further, peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausundrao Rao and another Vs. State of Tamil Nadu and others*, 2002 (3) SCC 533.

Revering back to the peculiar fact situation obtaining in the present case, intention of the petitioners to cause the death of the complainant has been found conspicuously missing, coupled with another material fact that injuries suffered by the complainant were found by the doctor to be simple in nature. In

such a situation, it is unhesitatingly held that there was no scope for the learned trial court to frame the charge under Section 307 IPC. Passing of the impugned order framing of charge under Section 307 IPC has resulted in miscarriage of justice, causing serious prejudice to the petitioners. It seems that the complainant party, with a view to put unwarranted pressure on the petitioners, got added the offence under Section 307 IPC in the FIR, which was initially registered under Sections 324/34 IPC, thus, the charge under Section 307 IPC, cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that present petition deserves to be allowed. The impugned order dated 1.5.2015 passed by the learned Additional Sessions Judge is set aside, however, only to the extent of charge under Section 307 IPC. Charges framed against the petitioners under Sections 324/34 IPC shall remain intact and they shall face the trial, accordingly. The learned trial court is directed to proceed further with the trial.

Resultantly, with the above said observations made and directions issued, instant petition stands allowed to the extent indicated above, however, with no order as to costs.

27.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE