

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

**CRR No. 3179 of 2014 (O&M)  
Date of Decision: 3.12.2015**

Jasbir Singh and another

.....Petitioners

**Vs.**

Kulbir Singh

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Vipin Mahajan, Advocate  
for the petitioners.

Mr. M.S. Basra, Advocate  
for the respondent.

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

**RAMESHWAR SINGH MALIK J.**

Instant criminal revision petition is directed against the impugned order and charge sheet of even date, i.e. 28.7.2014, whereby the learned Additional Sessions Judge, Gurdaspur, found a prima facie case made out against the accused persons, including present petitioners, for framing of charges for the offences punishable under Sections 506/450/326/325/323/ 148/149 of the Indian Penal Code ('IPC' for short).

Notice of motion was issued and thereafter, on the joint request made on behalf of both the parties, matter was referred to the Mediation and Conciliation Centre of this Court, vide order dated 14.9.2015, to explore the possibility of amicable settlement between the parties. However, parties could not arrive at an amicable settlement. That is how, this Court is seized of the matter.

Learned counsel for the petitioners raised only one issue that petitioners could not have been charge sheeted for the offences punishable under Section 450 IPC, because the offence under Section 326 IPC, allegedly committed by the petitioners, was not punishable with at least imprisonment for life, but it was punishable with imprisonment of either description for a term which may extend to 10 years or imprisonment for life. He further submits that for the purpose of framing of charge under Section 450 IPC, offence committed after house trespass should have been punishable with imprisonment for life and not for any lesser punishment. Since, in the present case, subsequent offence after house trespass, as alleged against the petitioners, was only for an offence under Section 326 IPC, which was punishable with imprisonment for life or with imprisonment of either description which may extend to 10 years, provisions of Section 450 IPC would not be attracted. He concluded by submitting that since the learned trial court has failed to appreciate this material aspect of the matter, while passing the impugned order, the same has resulted in miscarriage of justice. In support of his contentions, learned counsel for the petitioners places reliance on two judgments of this Court in the cases of Amrik Singh

and another Vs. State of Punjab, 1998 (2) Civil Court Cases, 136,  
and Tejinder Singh and another Vs. State of Punjab (CRM-M-1807 of  
2010 decided on 30.7.2010). He prays for setting aside the impugned order as well as the charge sheet, by allowing the present petition.

Per contra, learned counsel for the respondent submits that learned trial court was fully justified on facts as well as in law, while passing the impugned order framing charge against the accused persons, including the present petitioners, for the offences committed by them. He further submits that if the complainant-respondent would fail to bring home guilt against any accused qua any particular offence, the accused would be entitled for benefit of doubt, as per the settled proposition of law. However, so far as framing of charge is concerned, any minimum punishment for the offence under Section 326 IPC was not the requirement of law, as sought to be argued by learned counsel for the petitioners. He would next contend that the judgments relied upon by learned counsel for the petitioners are clearly distinguishable on facts, because reading of any extra word into the statute would amount to violation of the legislative intent. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present one is not a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

The only short but important question of law that falls for consideration of this Court is, whether charge under Section 450 IPC would be framed only when other offence committed after house trespass, was punishable at least with life imprisonment and not otherwise.

It goes without saying that offence under Section 326 IPC is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years, thus, no minimum sentence is provided under Section 126 IPC, as provided for an offence under Section 302 IPC. In such a situation, the only point for consideration of this Court is, whether this Court or any other court for that purpose, would be justified, while interpreting the ambit and scope of Section 450 IPC, to read into it a word minimum or exclusive or alone, so as to mean that charge under Section 450 IPC would be framed only when the subsequent offence would be punishable with imprisonment for life alone or for an offence punishable with imprisonment for life exclusively or minimum punishment for imprisonment of life would have been provided for the said offence.

Before proceeding further, it would be appropriate to refer to Sections 326 and 450 IPC and the same read as under:-

**Section 326 IPC**

**Voluntarily causing grievous hurt by dangerous weapons or means**—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for

shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

#### **Section 450 IPC**

**House-trespass in order to commit offence punishable with imprisonment for life.**—Whoever commits house-trespass in order to the committing of any offence punishable with [imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Reference to Section 452 IPC would also be relevant and the same reads as under:-

**House-trespass after preparation for hurt, assault or wrongful restraint.**—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for

wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A combined reading of the abovesaid provisions of law would make it crystal clear that wherever the legislature intended to provide a specific or minimum term of imprisonment, the same has been clearly provided, as under section 302 IPC. However, when the language of Section 326 IPC is read with Section 450 IPC carefully, any such intention of the legislation has been found conspicuously missing, to the effect that charge under Section 450 IPC would be framed, only when the subsequent offence after commission of house trespass would be punishable with a minimum sentence of imprisonment for life.

With a view to interpret the provisions of Section 450 IPC on the touch stone of harmonious and purposive construction, there is no room for doubt that the words minimum, alone or exclusive cannot be read into Section 450 IPC. It is so said, because while doing so, this Court would be exceeding its jurisdiction, overstepping in the exclusive domain of the legislature and the legislative intent would also stand violated.

So far as the judgments relied upon by the learned counsel for the petitioners are concerned, there is no dispute about the law laid down therein. However, on a careful perusal of the cited judgments, none has been found of any help to the petitioners, being

distinguishable on facts. In fact, it seems that the scope and ambit of Section 450 IPC, with a view to interpret the legislative mandate behind it, was neither raised before this Court nor there was any occasion for the court to deliberate on such an aspect of the matter.

Further, it is the settled principle of law that peculiar facts 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 **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is equally pertinent to note that the defect, if any, in framing of charge would never disentitle any court of law from convicting the accused for the offence for which guilt would have been brought home against the accused, on the basis of the evidence brought on record. Similarly, in view of the provisions of Section 464 of the Code of Criminal Procedure ('Cr.P.C' for short), even if the learned trial court omitted framing of any particular charge against the accused for any particular offence at the time of framing of charge and learned court of competent jurisdiction comes to a definite conclusion that prosecution has brought home guilt against accused qua the said offence for which charge could not be framed, learned trial court would be well within its jurisdiction to record conviction of the accused awarding him suitable sentence for the said offence.

Thus, any error, omission or irregularity in framing of the

charge, including any misjoinder of charges, unless a failure of justice has taken place, the learned trial court would be doing well, while recording conviction against accused qua any particular offence if the prosecution was able to bring home guilt against the accused for the said offence, irrespective of the fact that charge was framed or not.

So far as peculiar facts and circumstances of the present case are concerned, learned counsel for the petitioners could not point out any prejudice which might have been caused to the petitioners, while framing charge against them by way of impugned order and charge sheet. In the absence of any such prejudice having been shown, this Court would be exceeding its jurisdiction while interfering in the impugned order framing charge. Further, learned counsel for the petitioners also failed to point out any jurisdictional error or patent illegality apparent in the impugned order as well as in the impugned charge sheet, so as to convince this Court to take a different view than the one taken by the learned trial court, therefore, the impugned order as well as charge sheet deserve to be upheld, for this reason, as well.

The abovesaid view taken by this Court is also in consonance with the law laid down by the Hon'ble Supreme Court and different High Courts including this Court, in the following judgments:-

1. Labh Singh and others Vs. State of Punjab, 1990 SCC (cri) 602 (SC)

2. Anna Reddy Sambasiva Reddy and others Vs. State of Andhra Pradesh, 2009 AIR (SC) 2661 (SC)

3. Shamnasaheb M. Multtani Vs. State of Karnataka, 2001 AIR (SC) 921 (SC)

4. Balraje @ Trimbak Vs. State of Maharashtra, 2010 (6) SCC 673 (SC)

5. Narwinder Singh Vs. State of Punjab, 2011 AIR (SC) 686 (SC)

6. R.S. Mishra Vs. State of Orissa and others, 2011 (2) SCC 689 (SC)

7. Santosh Singh Vs. State of Punjab, 1993 (1) RCR (criminal) 352 (P&H)

8. Harinder Singh @ Babba and another Vs. State of Punjab, 2011 (2) RCR (criminal) 245 (P&H)

9. Satyendra Kumar and another Vs. State of M.P., 2007 (2) Crimes 391 (M.P. High Court)

10. Dudnath @ Ajay Baburam Harijan Vs. State of Maharashtra, 2012 (1) Bom. C.R. (cri) 372 (Bombay High Court).

Reverting to the peculiar fact situation obtaining in the present case and respectfully following the law laid down in the cases referred to hereinabove, it is unhesitatingly held that learned trial court did not exceed its jurisdiction, while passing the impugned order framing charge against the petitioners. However, it goes without saying that if ultimately, prosecution fails to bring home guilt against the accused qua any particular offence, learned trial court would be doing well, while granting benefit of doubt to the accused or awarding lesser punishment to the accused, as the case may be. So far as the impugned order and charge sheet are concerned, no fault can be found with either of them and the same deserve to be upheld, for this reason also.

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 criminal revision is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

3.12.2015  
*Ak Sharma*