

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Misc. No.M- 3663 of 2014(O&M)

Date of Decision: February 19, 2015.

Ram Singh

..... PETITIONER (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Dinesh Ghai, Advocate
for the petitioner.

1. Whether reporters of 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?

LISA GILL, J.

Petitioner-complaint impugns order dated 10.11.2014 passed by the learned Additional Sessions Judge, Narnaul whereby his application dated 18.03.2013 for amendment of charge has been dismissed.

Briefly stated, the facts are that FIR No.204 dated 15.08.2005 was registered under Sections 323/324/34 IPC against respondents No.2 to 6. The said respondents were proceeded against for the commission of offences punishable under Sections 323/324/148/149 IPC. They were ultimately convicted and sentenced by the learned Chief Judicial Magistrate, Narnaul vide

judgment and order dated 10.03.2011, Annexure P2. State filed an appeal for enhancement of the sentence imposed upon the said respondents. An appeal was also preferred by the present petitioner-complainant.

During the pendency of the appeal, an application dated 18.03.2013, Annexure P3, has been moved by the petitioner for amendment of charge. It is prayed that the statements of the witnesses, FIR itself and the evidence on record indicate commission of offence punishable under Section 307 IPC. It is prayed that charge for offences punishable under Sections 307/323/324/148/149 IPC be framed against the accused persons.

Crl. Misc. No.M-36978 of 2014 was preferred before this Court by the petitioner for a direction to the appellate court for deciding the application, Annexure P3, for amendment of charge prior to the hearing of arguments in the main appeal. Following order was passed by this Court on 30.10.2014:-

“Learned counsel for the petitioner submits that he does not press this petition except to the extent that his application for the amendment of charges which is stated to be pending before learned Additional Sessions Judge, Narnaul be decided.

Keeping in view the limited prayer made above but without commenting on the merits of the case or even the maintainability of the said application, this petition is disposed of with a direction to learned appellate court to decide the said pending application for amendment of the charges, in accordance with law.

Disposed of accordingly.”

This application was dismissed by the learned appellate court vide impugned order dated 10.11.2014, Annexure P1. Hence aggrieved, present

petition has been filed.

Learned counsel for the petitioner vehemently argues that grave injustice has been rendered to the petitioner by dismissal of this application. As per settled law, an application for amendment of charge can be moved and allowed at any stage. The appellate court has full power to direct the amendment of the charge in appropriate cases. Learned Additional Sessions Judge, Narnaul has erred in dismissing his application, *inter alia*, on the ground that the complaint/petitioner has never challenged the framing of charge at any earlier stage. Reliance is placed on a decision of Hon'ble Supreme Court in **Sannaila Subba Rao and others v. State of A.P., 2008(3) RCR(Criminal) 973.**

It is further submitted that a perusal of the FIR itself as referred to in the judgment dated 10.03.2011 (Annexure P2) shows that all the accused persons had come on a tractor, trespassed on the complainant's land and thereafter, with a common object inflicted injuries on the complainant's party. Learned counsel for the petitioner specifically refers to Injury No.1 on the person of Nihal Singh as detailed in para 6 of the Grounds of Revision i.e., “incised wound 1.7cm x 0.5cm with oozing out of fresh blood present on left parieto temporal region”.

It is forcefully urged that this injury by itself is enough to indicate the essential ingredients indicative of the offence punishable under Section 307 IPC. It reflects that the accused persons had indeed come with an intention to kill the complainant and others.

It is argued that the petitioner is not debarred from moving the

application for amendment of charge at the appellate stage even if such a prayer had not been made at any earlier stage. This by itself cannot be a ground to reject his application.

In the facts and circumstances, accused-respondents should have been tried for the offences punishable under Section 307 IPC alongwith other offences.

I have heard learned counsel for the petitioner and gone through the file as well as the evidence of PW6 Dr.R.K.Dahiya.

It is a matter of record that the FIR No.204 dated 15.08.2005 was registered under Sections 323/324/34 IPC against the accused-respondents No.2 to 6. Charge was framed against them for the offences punishable under Sections 323/148/149 IPC. Petitioner chose not to challenge the framing of charge at any stage prior to the application which he has moved on 18.03.2014 before the appellate court. Perusal of this application does not indicate any reason whatsoever, for not having taken the requisite steps. In fact there is not even an advertence to the delay in taking such a step leave alone furnish a plausible explanation.

There is no quarrel with the proposition of law laid in **Sannaila Subba Rao's** case (supra) to the effect that any error or omission in framing the charge can be rectified even at the appellate stage provided no prejudice is caused to the accused persons.

There is no doubt that on the ground of delay itself, the petitioner's application cannot be set aside. However, it is expected that at least an attempt would be made by the petitioner to explain his conduct in not raising this issue

since the year 2005. Admittedly, the FIR was registered on 15.08.2005 under Sections 323/324/34 IPC, charge framed under Sections 323/148/149 IPC. Petitioner deemed to sit quietly. There is not even a whisper of an explanation for the same in the application, Annexure P3. Learned counsel for the petitioner is however unable to point out any error or omission in framing of charge under Sections 323/148/149 IPC.

Furthermore, a perusal of the testimony of PW6 Dr. R.K.Dahiya reveals that Injury No.1 on the person of Nihal Singh has been opined to be superficial in nature. Relevant part of his testimony reads as under:-

“Dr. R.K.Dahiya Medical Officer, General Hospital, Mandi Khera, Mewat.

Stated that on 14.08.2005, I was posted as M.O. At G.H. Narnaul and on that day medico legally examined Nihal Singh son of Shri Ram, resident of Latafpur P.S. City Narnaul with alleged history of assault and found following injuries on his person:-

1. An incised wound 1.7cm x 0.5cm with oozing out of fresh blood present on left parieto temporal region.
2. A red coloured abrasion 4x2 MM present tender and swollen dorsum of nose.
3. Swelling with tenderness present over both maxillary region.
4. Complaint of chest pain over sternum.

Injury No.1 was advised surgeon opinion, injury No.2 was advised ENT opinion, injury No.3 was advised x-ray and kept under observation and injury No.4 was advised x-ray and surgeon opinion. The kind of weapon was sharp for injury No.1, blunt for injury No.2 and 3 and blunt, if any, for injury No.4. The probable duration was within six hours for injury No.1 and 2, within 24 hours for injury No.3 and cannot say regarding injury No.4. Ex.PW6/A is the correct copy of the original MLR issued by me.

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The injury No.3 on the person of Nihal Singh may be caused on 13.08.2005 at 8.40 p.m. Injury No.1 on the person of Nihal Singh was superficial in nature. Abrasions are superficial in nature. There were no lacerations or abrasion or contusion in the swellings recorded by me in the MLR of both the injured Nihal Singh and Ram Singh. The possibility of injury No.2 and 3 on the person of Nihal Singh and injury No.1 to 3 on the person of Ram being sustained by fall on a hard surface cannot be ruled out.”

Learned counsel for the petitioner is unable to point to any evidence on record which would persuade this Court to interfere, at this stage. There is nothing on record which indicates the commission of offence punishable under Section 307 IPC qua respondents No.2 to 6.

Keeping in view the facts and circumstances of the case, I find no infirmity or illegality in the impugned order dated 10.11.2014 passed by learned Additional Sessions Judge, Narnaul.

Petition is dismissed.

February 27, 2015.
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(LISA GILL)
JUDGE