

**Sr. No.213
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRR No.727 of 2014
Date of Decision: 20.10.2015**

Mohinder Pal

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajiv Joshi, Advocate,
for the petitioner.

Mr. P.S.Bajwa, DAG, Punjab.

Mr. Ashutosh Hoshiarpuri, Advocate,
for respondents No.2 to 7.

RAMESHWAR SINGH MALIK, J.

Instant Criminal Revision Petition, at the instance of complainant is directed against the charge-sheet dated 21.12.2013, whereby the learned Judicial Magistrate Ist Class, framed the charges against the accused-respondents, arising out of FIR No. 187 dated 06.10.2012, under Sections 323, 324, 148 and 149 of the Indian Penal Code (for short 'IPC') registered at Police Station Division No. 5, Jalandhar.

Notice of motion was issued.

Thereafter, when the case came up for hearing on 09.12.2014, following order was passed by this Court:

“Learned counsel for respondents No.2 to 7 submits that revision is maintainable before the lower Court whereas the petitioner has approached this Court

without availing the remedy of revision. Learned counsel for respondents No. 2 to 7 also submits that in case any alteration in framing of charge is there that can be done by the trial Court itself.

Learned counsel for the petitioner seeks time to address arguments.

Adjourned to 19.03.2015.”

Again on 17.07.2015, following order was passed by this Court:

Learned proxy counsel for respondents No.2 to 7 has pointed out that the remedy of revision was available to the petitioner before the Court of Sessions. But, without availing that remedy, the revision before this Court is not maintainable.

A date is requested for arguments.

Adjourned to 20.10.2015 for arguments on this point.”

Faced with the above, learned counsel for the petitioner, while trying to justify the maintainability of the present petition, places reliance on following three judgments:-

Central Bureau of Investigation Vs. State of Gujarat 2007 (3) R.C.R.(Criminal) 610, Kala Singh Vs. Gurdev Kaur 1984 PLR 82 and Issac Jaisa and another Vs. Jasmit Singh Saluja and another 2003 (2) R.C.R. (Criminal) 20. He further submits that since petitioner has got the remedy of revision before the learned Court of Sessions as well as this Court against the impugned charge-sheet, the present revision petition is maintainable before this Court. Learned counsel for the petitioner would next contend that as per the

facts of the case, charge under Section 307 IPC should have been framed against the accused-respondents whereas the charges have been framed only for the offence under Sections 323 and 324 read with Section 149 IPC. He prays for allowing the present revision petition.

On the other hand, learned counsel for the State as well as learned counsel for respondents No. 2 to 7 would contend that neither the present criminal revision petition is maintainable before this Court nor the impugned charge-sheet suffers from any illegality. They pray for dismissal of the present petition on maintainability as well as on merits.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, no interference is warranted at the hands of this Court while exercising its revisional jurisdiction, which itself is limited one. To say so, reasons are more than one, which are being recorded hereinafter.

No doubt, under Section 397 as well as under Section 438 of the Code of Criminal Procedure (for short 'Cr.PC'), the Sessions Court as well as this Court have got the concurrent jurisdiction. However, it is equally true that one and all cannot be permitted to by pass the equally efficacious alternative remedy available to the aggrieved party, before approaching this Court. It is so said because if all the anticipatory bail petitions and revisions like

the present one are permitted to be filed straightway before this Court, such a practice would not only be an unhealthy practice for the justice delivery system but the same would also be running contrary to the very scheme of the Code of Criminal Procedure. Once the legislature in its wisdom, has provided a specific remedy under the Cr.P.C. itself for every aggrieved party, said remedy must be availed by the aggrieved party, at the first instance before straightway approaching this Court, ignoring or by passing the equally efficacious alternative remedy and that too for no good reasons.

Although no straight-jacket formula can be and should be laid down making it as an absolute rule about non-maintainability of such petitions before this Court, yet it is equally true that it cannot be permitted, as a general rule to by pass the equally efficacious alternative remedy before filing such petitions straightway before this Court. It is so said because in the very nature of things, the aggrieved party must avail its remedy which is available to it at its very door step in spite of rushing to a far off place, as the petitioner has done in the present case. Such kind of petitions can be maintained but only in exceptional circumstances and in rare cases, as and when a party is able to make out it to be a special case, pointing out the well justified and compelling circumstances as to why such an aggrieved party could not avail the equally efficacious alternative remedy, at the first instance.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about

the law laid down in them. However, on close perusal of the cited judgments none of them has found to be of any help to the petitioner, being distinguishable on facts.

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 **Padmasundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Coming to the peculiar fact situation obtaining in the present case, instant petition is not maintainable as it is for more than one reasons. Firstly, if petitioner was seeking alteration of the charge, as sought to be argued before this Court, he should have moved the appropriate application before the learned trial Court itself which was very much competent to entertain and decide such an application. Admittedly, petitioner has not moved any such application seeking alteration of the charge.

Secondly, the impugned order framing the charge is not even under challenge before this Court. What is under challenge is only the charge-sheet (Annexure P-3). Having been confronted with this fact situation by the Court, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Neither the petitioner has sought any alteration of the charge nor he challenged the order framing the charges, for the reasons best known to him.

Thirdly, no justified or specific reasons are forthcoming as to why the petitioner could not file his revision petition before the learned Court of Sessions at Jalandhar itself. Under these circumstances, the instant petition is not maintainable for all these three equally strong reasons.

No other argument was raised.

Considering the peculiar fact situation of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. However, it is made clear that petitioner would be at liberty to avail his equally efficacious alternative remedy of revision before the learned Court of Sessions. It is also clarified that if the petitioner would file appropriate revision petition within a period of one month from the date of receipt of certified copy of this order, the respondents shall not raise the issue of limitation.

Resultantly, with the above said observations made, present petition stands dismissed, however, with no order as to costs.

20.10.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**