

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM No.M-12156 of 2016(O&M)****Date of Decision: April 07, 2016**

Vijay Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek K. Thakur, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Biri Singh, for setting aside the order dated 19.01.2016 passed by learned Addl. Chief Judicial Magistrate, Pathankot, whereby the application under Section 323 Cr.P.C. filed by the petitioner was dismissed and setting aside the order dated 16.03.2016 passed by learned Sessions Judge, Pathankot, vide which the revision filed by the petitioner was also dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that the present case has been got registered by the present petitioner Vijay Kumar by stating that in the

morning, his brother Ashwani Kumar @ Bala was coming on his motorcycle for taking wood from the Saw Mill at Sarna. On the way, complainant met him and they both started riding on the said motorcycle, headed towards Sarna Saw Mill. At about 6.00 A.M., when they reached on the bridge of URDC Canal, then a Canter bearing registration No.HP-29A-7135 came at a very fast speed from the front i.e. Pathankot side and to save, his brother turned his motorcycle towards left hand side but the Canter driver carelessly and at a very high speed, struck the Canter from wrong side with their motorcycle and they fell down and received many injuries. When the brother of the complainant was being taken to the civil hospital, he died on the way. The Canter driver stopped his Canter at the spot and ran away, who can be identified by the complainant if brought before him. It is also in the FIR that complainant has suspicion that Vijay Pathania, Sarpanch, Pawan Mahajan, Paramdeep Pathania and Kuldeep Pathania, with whom, they are having three cases and complainant's brother has to submit his evidence in the Court, have caused this accident.

The FIR in the present case was registered under Sections 304-A, 279 and 427 IPC. The challan, as argued, was presented under Section 304-A IPC. Learned trial Court, also framed the charge under Section 304-A IPC against accused i.e. respondent No.2 Biri Singh.

At the time of arguments, it is argued that the petitioner filed application before trial Court for further investigation under

Section 173(8) Cr.P.C. which has also been dismissed by learned trial Court. It is admitted at the time of arguments that the order regarding framing of the charge and order dismissing the application for further investigation, have not been challenged before higher/appellate Courts. Now, the application has been filed by the petitioner under Section 323 Cr.P.C. for committing the case to the Sessions Court by holding that prima facie offence under Section 302 and 120-B IPC is made out.

Learned ACJM, Pathankot, after discussing the facts of the case, dismissed the application vide impugned order dated 19.01.2016. I have gone through the impugned order, which is correct and as per law. No illegality has been committed while passing the impugned order dated 19.01.2016. Except the statement of the complainant showing suspicion in the FIR, there is no evidence on record to show that it is a murder and not an accident. Even in the FIR, the complainant has nowhere stated that accused-driver Biri Singh with intention to kill caused the accident.

Learned counsel for the petitioner has relied upon the supplementary statement given much after the occurrence and on the application filed to Human Rights Commission etc. but he failed to show to this Court any evidence except the statement of the complainant, that Biri Singh accused, in any way, is related to other alleged accused. The other alleged accused namely Vijay Pathania etc. have not been summoned by the Court in this case nor they have been joined in the investigation.

In view of the above, I find that at this stage, there is nothing on the record to show prima facie that it is a case under Sections 302 and 120-B IPC. Therefore, the case is not liable to be committed to the Sessions Court.

In view of the above discussion, I find that the impugned orders passed by the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

April 07, 2016
Vgulati

(INDERJIT SINGH)
JUDGE