

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

**CRM-M-2199 of 2016
DECIDED ON: JANUARY 21, 2016**

KAMALDEEP SINGH @ KAKA & ORS

....PETITIONERS

VERSUS

STATE OF PUNJAB & ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 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?**

Present: Mr. Sherry K. Singla, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

Instant petition has been preferred under Section 482 Cr.P.C. seeking quashing of order dated December 08, 2015 passed by learned Additional Sessions Judge, Sangrur (Annexure P-7) whereby, order dated September 02, 2015 passed by Sub Divisional Judicial Magistrate, Malerkotla was set aside, vide which, the charge was only framed under Section 341 and 323 read with Section 34 IPC against the petitioners by observing that no offence under Section 326 IPC is made out and learned trial Court was directed to pass afresh order keeping in view the observations made therein.

The contention of learned counsel for the petitioners is that on the basis of inquiry report dated May 07, 2015 as well as opinion(s) of Board of

Doctors, challan was presented under Section 341 and 323 read with Section 34 IPC. Accordingly, Sub Divisional Judicial Magistrate, Malerkotla framed the charge for the *prima-facie* commission of afore-said offences. At that time Sub Divisional Judicial Magistrate, Malerkotla accepted the opinion of the Medical Officers that an injury which falls within the ambit of Section 326 IPC may be the result of friendly hands.

Here it would be pertinent to mention that as per case of prosecution, an injury No.2 was allegedly caused with a sharp edged weapon by Kamaldeep Singh to the complainant but no specific opinion has been given by Board of Doctors and it has simply been opined by them that possibility of afore-said injury by friendly hands cannot be ruled out. No material appears to have been collected in this regard, as to who has inflicted the said injury to the complainant, if it has not been caused by accused/petitioners. Similarly, inquiry report submitted by the investigating agency is also on the basis of oral statements of the witnesses.

It is well settled that at the time of framing of charge the Court has to apply its mind and to frame the charges, which are made out from the report under Section 173 (2) Cr.P.C., as well as documents annexed with it. Since, lower Appellate Court was of the view that there is *prima-facie* evidence for the commission of an offence under Section 326 IPC in view of specific allegations learned trial Court was directed to pass afresh order and revision was accordingly, allowed.

The order passed by Appellate Court cannot be faulted with. It is the duty of the trial Court to see from material(s) available on file to pass afresh order, keeping in view the observations made by the revisional court.

Since, there is no infirmity or illegality in the impugned order(s), this Court does not find any merit in the instant petition. As such the same stands dismissed.

JANUARY 21, 2016
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(JASPAL SINGH)
JUDGE