

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

**Crl. Rev. No.2274 of 2014
Date of decision : 05.01.2016**

Bhagat Singh and others

.....Petitioners

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amandeep Saini, Advocate
for the petitioners.

Mr. Deep Singh, AAG, Punjab.

Mr. Shivoy Dhir, Advocate
for respondent no.2.

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ANITA CHAUDHRY, J.

The petitioners are aggrieved with the order dated 06.06.2014, passed by the Sessions Judge, Rupnagar who allowed the revision filed by the complainant and directed the Magistrate to reconsider the case.

An occurrence took place on 19.02.2011. The complaint had been given by Karnail Singh. The petitioners were challaned under Sections 323, 325, 506, 34 IPC. An application was filed by the complainant for framing charge under Section 307 IPC. The trial Magistrate framed the charges under Sections 323, 325, 506, 34 IPC

and dismissed the application filed by the complainant. Aggrieved with the order, the complainant preferred a revision petition on 30.10.2013 but later withdrew the same on 17.12.2013 without seeking any permission to file a fresh revision. Thereafter, he filed another revision which has been allowed by the Sessions Judge. The order passed by the trial Court was set aside and the matter was remitted back to the trial Court for reconsideration, in view of the observations made by it.

Aggrieved by the same, the petitioners have filed this revision assailing the order on the ground that the second revision was not maintainable and no permission was taken to file fresh revision. A plea has also been taken that the injuries were declared grievous in nature and it was not declared dangerous to life and the trial Court had rightly held that there were no prima facie grounds to add Section 307 IPC. It was pleaded that the injuries were caused with a blunt weapon and it would fall only under Section 325 IPC and charge under Section 307 IPC could not be framed. It was pleaded that the Investigating Officer who had added Section 307 IPC, did not have a good reputation and departmental proceedings were initiated against him and Section 307 IPC was deleted.

The record of the trial Court had been summoned.

The submission made on behalf of the petitioners is that the complainant's application for adding Section 307 IPC had been dismissed and he had filed a revision which had withdrawn without seeking permission to file the revision again and the second revision was not maintainable. It was urged that opinion of the Medical Officer

had been taken and the injury was not declared dangerous to life and it was caused with a danda and the trial Court had rightly dismissed the application but in revision, the Sessions Judge wrongly observed that the complainant had categorically said that the injury was caused with the intention to cause death and all the injuries were on the vital part of the body, leading to a fracture of the left parietal bone and would fall under Section 307 IPC. It was urged that on the basis of material on record, there was no justification for setting aside the well reasoned order passed by the Magistrate nor there was any reason to remit the case back to the trial Court for reconsideration. It was urged that Neurosurgeon of PGI had given its opinion that the injury was grievous and charge could have been framed only under Sections 323, 325, 34 IPC. Reliance was placed upon ***Basant Singh Vs. State of Punjab 1986(2) RCR (Criminal) 245, Pritam Singh and another Vs. State of Punjab 2010(3) RCR (Criminal) 395 and Rajinder Prasad Vs. Bashir 2001(4) RCR (Criminal) 312.***

The submission on behalf of the complainant was that the revision was withdrawn as there was a technical defect and it was filed again. It was urged that there was a fracture on the parietal bone and the injury was on the vital part of the body and in a case under Section 307 IPC, it is the intention which matters and the injury had been given on the head which resulted in a fracture and the case would fall under Section 307 IPC.

The petitioners are alleged to have caused injuries to the

complainant. In all, there were five injuries and there is one injury with a danda which was caused on the head leading to fracture of the left parietal bone. The Neurosurgeon had given its opinion that the injury was grievous. It was not declared dangerous to life. The challan was filed under Sections 323, 325, 506, 34 IPC. The complainant moved an application for addition of Section 307 IPC which had been dismissed by the Magistrate. It had made the following observations:-

“Now in the present case, initially FIR was registered u/s 307 IPC and thereafter injury on the person of Karnail Singh was declared grievous in nature as per report of the doctor of Neurosurgery Department of PGIMER Chandigarh and doctor has not declared the injury on the person of Karnail Singh as dangerous to life. So accordingly, there is no prima-facie ground to come to the conclusion that injury on the person of Karnail Singh was dangerous to life and application of prosecution is premature as nothing has come on the record that injury on the person of Karnail Singh is dangerous to life and as per challan u/s 173 Cr.P.C, injury has been declared as grievous in nature which was caused by blunt weapon. So prima-facie case against accused for offences u/s 323, 325, 506 IPC is made out and not for offence u/s 307 IPC and as such, application is declined.”

The complainant filed a revision which he withdrew on the ground that there was a technical defect. No permission was sought

to file a fresh revision. The order reads as under:-

“The learned counsel for the petitioner made statement that due to some technical defect in this revision petition, he does not want to proceed with the same and withdraws the same. In view of statement of learned counsel for the petitioner, the revision petition is dismissed as withdrawn. Lower court record be sent back and record of the revision petition be consigned to the record room.”

The petitioners filed another revision petition challenging the same order which was allowed by the Sessions Judge on 06.06.2014. The contention raised by the petitioners is that once the revision was withdrawn and permission was not taken to file the revision again, the second revision was not maintainable. There is weight in this submission. The revision was withdrawn from the Court of Additional Sessions Judge. The copy of the second revision is not available, therefore, no observations can be made as to whether reference to the first revision petition had been made therein. The complainant has conceded that he had filed a revision which he had withdrawn. In that case, the second revision petition was not maintainable. Even otherwise, the injury was declared grievous and the trial Magistrate was right in dismissing the application. The material on record did not justify the framing of the charge under Section 307 IPC. The order passed by the Sessions Judge is set

aside. However, if at any stage, the trial Magistrate finds that some evidence has come forth to justify a trial under Section 307 IPC then he would commit the case to the Court of Sessions.

The petition is allowed. The order passed by the Sessions Judge is set aside.

Lower Court record be sent back.

(ANITA CHAUDHRY)
JUDGE

05.01.2016

Sunil