

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.4116 of 2015 (O&M)

Date of decision: 22.04.2016

Amrik Singh and others

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vivek K. Thakur, Advocate for the petitioners
Mr.A.P.S.Gill, AAG Punjab

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 29.7.2015, passed by the learned Sessions Judge, Kapurthala, affirming the judgment of conviction and order of sentence dated 4.11.2014, passed by the learned Judicial Magistrate 1st Class, Kapurthala, vide which the petitioners were convicted for the offence punishable under Section 148 read with Section 149 IPC and sentenced to pay a fine of Rs.1000/- each, in default thereof, to undergo further Rigorous Imprisonment for seven days. However, they were acquitted of the charges framed under Sections 294 and 506 IPC.

The allegations against the petitioners are that on account of some earlier dispute on 27.5.2008 at about 6.30 am all the accused came to the house of Amrik Singh ex-Sarpanch and Daljit Singh son of Pritam Singh and used filthy language. Family of Amrik Singh went into the room to save themselves. They also attacked one Kulwinder Singh son of Narinder Singh by using Kirpan. At that time, accused were alleged to be armed with deadly weapons. Accused were charge sheeted for the offences punishable under Sections 148, 294 and 506 IPC.

After conclusion of trial, the learned Magistrate held that the offence under Sections 294 and 506 IPC is not made out. However, the accused -petitioners were convicted for the offence punishable under Section 148 IPC read with Section 149 IPC and sentenced to pay a fine, as stated above. Appeal filed by the petitioners was dismissed by the learned Sessions Judge, Kapurthala on 29.7.2015.

I have heard learned counsel for the parties and have also carefully gone through the file.

The allegations against the accused-petitioners are that they armed with deadly weapons came to the house of the complainant and used filthy language and also attacked one Kulwinder Singh. The lower Court has found that the offence of criminal intimidation under Section 506 IPC could not be proved. Similarly, offence under Section 294 IPC is also not proved. Meaning thereby that no other offence is proved against the present petitioners. Now the only allegation to be read against the petitioners

are that they assembled in front of the house of the complainant, allegedly armed with deadly weapons. Now the question would arise that when any other offence is not proved, whether the offence of rioting is proved. Section 141 IPC provides the definition of unlawful assembly, which is reproduced as under:-

141. Unlawful assembly.

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, {Subs.by the A.O.1950 for "the Central or any Provincial Government or Legislature"}[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

The definition of unlawful assembly shows that the common object of assembly of 5 or more persons must be to commit one of the offences mentioned therein. Which would further mean that the said offence must be proved. Therefore, if, the other offences are not proved, the accused cannot be convicted for the offence punishable under Section 148 IPC, for the reason that acts alleged in Section 141 IPC are not proved. Section 146 IPC defines riot which relates to the use of force or violence by the unlawful assembly. In this case, the petitioners have not been convicted for using any force or violence. Therefore, the offence of rioting is not proved. Therefore, the question of proving the rioting armed with deadly weapons would not arise. It would follow that once the other offences have collapsed against the petitioners, the only act proved against the petitioners are that they had assembled armed with deadly weapons without any intention to commit any of the offences mentioned in Section 141 IPC.

It being so, they also cannot be convicted under Section 148 IPC. Resultantly, the present revision is allowed and the judgments and orders passed by both the Courts below are set aside. All the petitioners stand acquitted of the offence punishable under Section 148 IPC (wrongly mentioned to be read with Section 149 IPC). The fine paid by them be refunded to them.

Revision is accordingly allowed.

22.04.2016

gk

**(Kuldip Singh)
Judge**