

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

**CRM-M No.15859 of 2014  
Decided on: 31.10.2017**

Balwinder Kaur

....Petitioner

Versus

Kikar Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

**Present:-** Mr. S.S. Kamboj, Advocate  
for the petitioner.

Mr. D.S. Randhawa, Advocate  
for respondents No.2 to 4 and 6 to 8.

**ARVIND SINGH SANGWAN J.**

Prayer in this petition is for quashing of the order dated 25.10.2012 (Annexure P1) passed by the trial Court vide which the respondents/accused have been discharged at the stage of framing of charge and the judgment dated 25.02.2014 (Annexure P2) passed by the Revisional Court vide which the revision filed against the order dated 25.10.2012 was dismissed.

Brief facts of the case are that the complainant – Balwinder Kaur wife of Baaj Singh resident of village Nanoval, P.S. Bhadson, Tehsil Nabha, District Patiala had filed a criminal complaint under Sections 323, 447, 506 and 120-B of the Indian Penal Code (in short 'IPC') against accused – Kikkar Singh, his son – Naranjan Singh besides Kulwant Singh, Rajwant Singh @ Happy, Balwant Singh, all sons of

Bhagwan Singh, Gurdev Singh @ Bhola son of Anokh Singh, Amandeep Singh of Baldev Singh, Randeep Kaur wife of Gurdev Singh, all residents of village Nanoval, Tehsil Bhadson, P.S. Bhadson, District Patiala on the allegations that the parties belong to the same village Nanoval and litigation was pending between husband of the complainant namely Baaj Singh and the accused regarding agricultural land in as much as Kikkar Singh was to give some land to Baaj Singh which he did not do. As such, Kikkar Singh and other accused nursed a grudge against Baaj Singh and his family. On 19.06.2006 at about 6.30 am, in the morning when Baaj Singh and his son Amarjit Singh had gone to fields in connection with agriculture work, then accused Kulwant Singh, Gurdev Singh, Rajwant Singh @ Happy armed with stick whereas remaining accused namely Kikkar Singh, Naranjan Singh, Balwant Singh and Amandeep Singh empty handed came there. Kikkar Singh and Naranjan Singh caught hold of Baaj Singh, whereas Kulwant Singh gave two 'soti' blows to Baaj Singh hitting him on right wrist and thumb of right hand; Kikkar Singh gave a fist blow to Baaj Singh hitting him on left eye, Gurdev Singh @ Bhoda gave soti blow to Baaj Singh hitting him on various parts of left leg. When Amarjit Singh son of the complainant rushed to rescue his father Baaj Singh, then Kulwant Singh, Rajwant Singh and Balwant Singh gave beatings to him with soties and fists. On hearing alarm raised by Baaj Singh and Amarjit Singh, the complainant reached the spot, then Rajwant Singh @ Happy gave three soti blows to her also. The complainant, her husband – Baaj Singh and son – Amarjit Singh ran towards their house to find safety. However, accused hurled filthy abuses upon them and

threatened to kill them. When complainant along with her husband and son was returning home, then Randeep Kaur and Gurmeet Kaur caught hold of her in the street and gave beatings to her. According to the complainant, all the accused in conspiracy with each other have caused injuries to her husband – Baaj Singh and son – Amarjit Singh. The complainant, her husband and her son were got admitted in the Government Hospital, Bhadson where they were medically examined. On 19.06.2006, ASI Raghbir Singh from P.S. Bhadson had recorded statement of the complainant and her husband and thereafter, lodged DDR No.24 dated 19.06.2006. However, no FIR was registered against the accused by the police despite repeated requests made by the complainant. Thereafter, the complainant filed the present complaint on 29.07.2006.

The petitioner, thereafter, led her preliminary evidence and the trial Court summoned the respondents/accused to face the trial. In pre-charge evidence, the petitioner examined Dr. Ranjit Singh as CW1, herself as CW2, Amarjit Singh as CW3 and Baaj Singh as CW4. Thereafter, the trial Court fixed the case for framing of the charges and after hearing the arguments, vide impugned order dated 25.10.2012 discharged the accused persons.

The petitioner challenged the order dated 25.10.2012 by filing a revision before the Revisional Court and the same was also dismissed vide impugned judgment dated 25.02.2014 by passing the following order:-

*“7. I have heard learned counsel for the revisionist namely Sh. Harvinder Pal Shukla, Advocate,*

*Sh. Manjit Singh Sidhu, counsel for accused/respondents besides going through the record and I find that there is absolutely no merit in the revision petition.*

8. *In the present case, the procedure adopted by the Magistrate was that of trial of warrant case. Section 244 Cr.P.C. provides that when, in any warrant case instituted other wise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as has been produced in support of the prosecution. Section 245 Cr.P.C. deals with the eventuality when the accused shall be discharged. It provides that if, upon taking all the evidence referred to in Section 244 Cr.P.C. the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Sub-section (2) of Section 245 Cr.P.C. provides that nothing, in this section be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. Section 246 Cr.P.C. deals with the procedure where accused is not discharged. It provides that if, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Thus, a close perusal of Section 245 and 246 Cr.P.C. above goes to show that the main thing is the opinion of the Magistrate i.e. judicial discretion as to whether any case against the accused is made out which unrebutted would warrant his*

*conviction, then charge is to be framed and if not then the accused is to be discharged.*

**9.** *In the present case, the Magistrate vide detailed order giving sound reasoning has come to the conclusion that no case is made out against the accused for framing any charge, resultantly discharging the accused. Reasons given by the accused for discharging the accused are many i.e. name of patient written as Baljinder Kaur and with cutting over there in MLR of Balwinder Kaur Ex.C3; Balwinder Kaur appearing as CW2 stating that occurrence took place for about 1- ½ hours and all the three injured were admitted in Civil Hospital, Bhadson and were medically examined whereas CW4 Amarjit Singh in his cross-examination stating that he was not admitted in hospital for 3/4 days. CW2 Balwinder Kaur stating that she had come after hearing cries of Baaj Singh and Amarjit Singh but no public independent witness having been joined; CW2 Balwinder Kaur stating that she had reached the fields after about 10/15 minutes after reaching of her son. However, CW3 Amarjit Singh stating that Balwinder Kaur had come after two minutes. Then the complainant Balwinder Kaur deposed that at the time of occurrence entire village was present. However, Baaj Singh deposed that no person was present at the place of occurrence. Balwinder Kaur stated that occurrence took place for about one to one and half hour whereas CW Baaj Singh stated that duration was about 8-10 minutes and according to CW Amarjit Singh occurrence took place for about half hour. There is also failure of PW Amarjit Singh to properly identify the place of occurrence.*

**10.** *Section 397 Cr.P.C. deals with calling for record to exercise power of revision. It provides that the High Court or any other Sessions Judge, may call and examine the record of any proceedings before any inferior*

*criminal Court situated within his local jurisdiction for the purpose of satisfying itself or himself as to the correctness legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court and may when calling for such record direct with execution of any such sentence be suspended and if the accused is not confined that he be released on bail or on his own bond the examination of the record. In that way revisional jurisdiction of this Court is quite limited unlike appellate jurisdiction. While exercising the revisional jurisdiction, the Court is to see as to whether order passed by the lower criminal Court passes the test of correctness, legality of propriety. Here, I do not find any illegality or impropriety in the order passed by the Magistrate. Further more, the Magistrate is not shown to have exercised judicial discretion in an arbitrary manner. Therefore, I do not see any reason to set aside the order being challenged in revision. As regards the authorities being referred by the learned counsel for revisionist Chander Kalan v Rameshwar and others 2010(4) RCR (Criminal) 687 (P&H), that had different facts. It related to framing of charge in challan case. Under section 227/228 Cr.P.C. relating to a Sessions Court considering the question of framing the charge whereas the present case relates to a Magistrate dealing with question of framing or non-framing of charge, discharge of the accused in a criminal complaint. Similarly, as regards the authority Sanghi Brothers (Indore) Pvt. Ltd. vs. Sanjay Choudhary and ors. 2008(4) RCR (Criminal) 640 (SC), wherein it was observed that when challan is to be presented in Court if there is strong suspicion about the commission of offence and involvement of the accused, if it is sufficient for the Court to frame charge at that stage there is no necessity of*

*formulating the opinion about the prospect of conviction. Again the observation relate to a challan case.*

*11. The trial Magistrate after giving reasons has come to the conclusion that no case is made out against the accused for framing charge against them in the process dismissed the complaint and discharged the accused. No interference with such judicial discretion exercised by the Magistrate is made out. Accordingly, finding no merit in the revision, the same stands dismissed. Lower court record be returned. File of this Court be consigned to the record room.”*

Counsel for the petitioner has submitted that it has come in the evidence of CW1 – Dr. Ranjit Singh that he has noticed injuries on the person of Baaj Singh i.e. injury No.1, a bruise on the left lower leg, injury No.2, a bruise on the antro lateral aspect of middle left thigh, injury No.3, conjunctival HGE in the left eye, injury No.4, an abrasion on the post lateral aspect of right wrist joint and injury No.5 swollen tip of right thumb. Similarly, he found 05 injuries on the person of Amarjit Singh i.e. injuries No.1 to 3 were bruises on right leg and left hip and injury No.4 was pain in the neck. CW1 – Dr. Ranjit Singh also found 04 injuries on the body of the complainant – Balwinder Kaur i.e. a bruise on right lower leg, right thigh and left hip and back of the neck.

It is further submitted that the medical version was proved from the ocular version of the statement of CW2 – Balwinder Kaur, complainant, her son – Amarjit Singh CW3 and her husband – Baaj Singh CW4, therefore, the trial Court has wrongly discharged the accused persons. It is also submitted that at the time of framing of the charge, the Court has to see whether there is a strong suspicion about

commission of offence for framing of the charge. It is further submitted that the trial Court has wrongly discharge the respondents/accused without framing charge and without following the proper procedure.

Counsel for the petitioner has relied upon the judgment ***“Sheoraj Singh Ahlawat and others vs State of Uttar Pradesh and another”***, 2013(1) RCR (Criminal) 153 where the Hon'ble Supreme Court has held that accused should not be discharged at the stage of framing of the charge where there are specific allegations as the truthfulness of the allegations can be decided at the time of conclusion of the trial and not at the stage of framing of the charge. Counsel for the petitioner has also relied upon the judgment ***“Onkar Nath Mishra and others vs State (NCT of Delhi) and another”***, 2008(1) RCR (Criminal) 336 where similar view has been taken by the Hon'ble Supreme Court.

Counsel for the petitioner has further submitted that the impugned order suffers from illegality and the same may be set-aside and charge be framed against the respondents/accused.

After hearing the counsel for the petitioner, I find no merit in the present petition. Both the Courts below have concurrently held that there is a cutting in the MLR (Ex.C3) of Balwinder Kaur. It is also held by the Courts below that there are material discrepancies in the statement of 03 witnesses. CW2 – Balwinder Kaur in her testimony has deposed that she reached the fields after 10-15 minutes after reaching of her son whereas CW3 – Amarjit Singh has stated that she came immediately thereafter. CW2 – Balwinder Kaur has further submitted that at the time of occurrence, the entire village was present whereas

CW4 – Baaj Singh has stated that no other persons was present. The complainant has further stated that all the 03 injured persons i.e. the complainant, her husband and her son were admitted in the hospital whereas CW3 – Amarjit Singh has stated that he was never admitted in the hospital. CW3 – Amarjit Singh could not identified the place of occurrence as he failed to tell the name of the persons whose houses were near the place of alleged occurrence.

The procedure adopted by the trial Court was that of a warrant case and as per the provisions of Section 244 Cr.P.C. where a warrant case is instituted other than on a police report, after the accused persons have appeared before the Magistrate, the Court will proceed to take the evidence in support of the prosecution version. As per Section 245 Cr.P.C., if upon taking the evidence recorded to in Section 244 Cr.P.C., if in the opinion of the Magistrate, for the reasons to be recorded no case is made out against the accused persons which would warrant his conviction, the Magistrate shall discharge the accused. Section 245(2) Cr.P.C. clearly provides that nothing in the Section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case for the reasons to be recorded by the Magistrate, if he considered the charges to be without any basis. The judgment relied upon by counsel for the petitioner do not relate to the warrant case and relate to the summons case where the trial Court, after receiving a report from the police had discharged the accused persons in exercise of its powers under Section 239 Cr.P.C. a procedure which is not applicable in the present case, being a warrant case. Accordingly, I find no merit in the present petition to interfere in exercise of the

jurisdiction under Section 482 Cr.P.C. against the concurrent findings recorded by the Courts below discharging the respondents/accused and accordingly, the petition is dismissed.

(ARVIND SINGH SANGWAN)  
JUDGE

31.10.2017  
*yakub*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable:       | Yes/No |