

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

CRM-M-27926-2016
Date of decision : 31.03.2017

Harjap Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Mr. P.S. Ahluwalia, Advocate for the complainant.

JITENDRA CHAUHAN, J.

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of order dated 01.08.2016, passed by learned Judicial Magistrate First Class, Dasuya, whereby, the prayer of the prosecution to discharge the petitioner in FIR No.75 dated 01.05.2016, registered under Sections 302, 342, 120-B and 148 read with Section 149 of the Indian Penal Code (for short 'the IPC'), at Police Station Tanda, District Hoshiarpur, has been declined and thereafter, by another order of even date, the case has been committed to the Court of learned Sessions Judge, Hoshiarpur.

FIR No.75 dated 01.05.2016, was registered on the basis of a statement made by Manjit Singh regarding the death of his son Luvpreet Singh, at the hands of the accused. As per the prosecution, the accused persons including petitioner Harjap Singh @ Sonu, who was holding a

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bamboo stick in his hand, gave several injuries to the deceased, who died on the spot. The motive was that Pritam Singh's daughter-in-law Rajdeep Kaur had left her in-law's house and had started living with the deceased and after two months, she had returned to her in-law's house with the consent of relatives and Panchayat. For this reason, the complainant suspected that under a pre-planned conspiracy hatched by Didar Singh, husband of Rajdeep Kaur, who was residing in Dubai, the son of the complainant was killed by accused Pritam Singh, his daughter-in-law Rajdeep Kaur, the present petitioner and others.

A perusal of the post-mortem report reveals that besides an incised wound on the skull, there were multiple defensive bruised wounds of purple brownish colour seen over the exterior surface of both the arms and over ventral and dorsal surface area of both the legs including thighs. After registration of the case, the Investigating Agency arrested Pritam Singh, his daughter-in-law Rajwinder Kaur and Harjap Singh @ Sonu (petitioner). Sahab Singh and Harman Singh were also named in the FIR apart from other unidentified persons, but they were not arrested. The Investigating Agency concluded the investigation by presenting final report under Section 173 Cr.P.C. wherein, Sahab Singh, Harman Singh, Didar Singh and Harjap Singh @ Sonu (petitioner) were exonerated, whereas, challan was presented qua Pritam Singh and Rajwinder Kaur. The investigating agency moved an application before the Illaqa Magistrate for getting the petitioner discharged but that application was dismissed vide impugned order dated 01.08.2016. Vide another impugned order of even date, learned Magistrate took cognizance against the petitioner and another accused and committed the case to the Court of Session.

Learned counsel for the petitioner contends that once the Investigating Agency had come to the conclusion that no offence had been committed by the petitioner, learned trial Court erred in not discharging him. He refers to Section 159 Cr.P.C. to contend that once no material is found against the accused, the Court is duty bound to release him. Furthermore, as the petitioner stood exonerated by the Investigating Agency, he could have been summoned only under Section 319 Cr.P.C. He cites ***Kishori Singh Vs. State of Bihar, 2001 CrL. Law Journal 123***; and ***Shoqin Singh Vs. State of Punjab, 2004 (1) RCR (Criminal) 47***.

On the other hand, learned counsel for the complainant vehemently argued that learned trial Court rightly rejected the application for discharge of the petitioner so moved by the Investigating Agency as ample material was available on record which would clearly spell the role of the petitioner in the commission of murder of the son of the complainant. It is contended that the name of the petitioner surfaced in the FIR as well as in the statement of the witnesses recorded under Section 161 Cr.P.C. and specific role has been ascribed to him. He cites ***Dharam Pal Vs. State of Haryana 2013(3) RCR (CrL.) 787***; ***Balveer Singh Vs. State of Rajasthan, 2016 (2) RCR (CrL.) 1006***; and ***Lallu alias Rehmat and another Vs. State, 2007 WLC 489***.

I have heard learned counsel for the parties and perused the case file.

The question which emerges for determination by this Court in the instant case is whether the Magistrate is well within its jurisdiction to disagree with the conclusion of the Investigating Agency and can take cognizance against the accused who has been placed on column No. 2 by the

Investigating Agency.

While dealing with a similar question, the Constitution Bench in Dharam Pal's case (supra), has laid down as under:-

“In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Criminal Procedure Code. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session proceed further in the matter.

25. *This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Session Court.”*

Similarly, in a recent decision rendered by Hon'ble the Supreme Court in Balveer Singh's case (supra), it has been held as under:-

“Sections 190 and 193 of the Code are in Chapter XIV. This Chapter contains the title “Conditions requisite for initiation of proceedings”. Section 190 deals with cognizance of offence by Magistrates. It empowers any Magistrate of the

First Class, and any Magistrate of the Second Class which are specially empowered to take cognizance “of any offence” under three circumstances mentioned therein. These three circumstances include taking of cognizance upon a Police report of such facts which may constitute an offence. It is trite law that even when Police report is filed stating that no offence is made out, the Magistrate can ignore the conclusion arrived at by the Investigating Officer and is competent to apply its independent mind to the facts emerging from the investigation and take cognizance of the case if it thinks that the facts emerging from the investigation do lead to prima facie view that commission of an offence is made out. In such a situation, the Magistrate is not bound to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of the case under Section 190(1)(a) though it is open for him to act under Section 200 or Section 202 as well.”

In the present case, the petitioner was amongst the persons who were named in the FIR and to whom injuries caused to the deceased were attributed. As per the FIR, the petitioner was allegedly holding a bamboo stick in his hand and he along with other co-accused caused injuries to the deceased. However, the application for discharge of the petitioner was moved on the ground that the petitioner had reached the place of occurrence at 11.50 p.m. and by then many people had gathered there. Moreover, it was stated that the petitioner had no motive to commit the offence. Learned Magistrate has rightly held that the contentions raised in the application for discharge are matter of trial and could be determined only after the evidence is led by the parties on all the points and thus, has declined the application. This Court is of the considered opinion that the findings recorded by learned Magistrate are in consonance with the provisions of law laid down in

Dharam Pal's case (supra) and Balveer Singh's case (supra) and do not call for any interference by this Court.

In view of the above discussion, finding no merits in the instant petition, the same is hereby dismissed.

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No