

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

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Crl. Misc. M 43087 of 2013 (O&M)

Date of decision: 16.03.2017

Gurwinder Singh and another

..... *Petitioners*

Versus

State of Punjab and another

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. G S Nagra, Advocate
for the petitioners

Mr. Mikhail Kad, AAG, Punjab

Mr. Sunny K Singla, Advocate
for respondent No. 2

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Rekha Mittal, J.

CRM 8710 of 2017

Heard.

Allowed as prayed for. Annexure P8 is taken on record.

Main case

The present petition filed under Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.) directs challenge against orders dated 24.09.2013 (Annexure P5), dated 01.11.2013 (Annexures P6 and P7) passed by the Sub Divisional Judicial Magistrate, Malerkotla in case titled *State v. Gurwinder Singh and others*, pertaining to FIR No. 03 dated 21.07.2006 registered at Police Station City Malerkotla for offence punishable under Sections 341, 354, 506 read with Section 34 of the Indian Penal Code (in short, IPC).

Counsel for the petitioners has submitted that on completion of

investigation in the aforesaid FIR, challan was presented in the Court and the petitioners were charged for committing offence punishable under Sections 341, 354 and 506 read with Section 34 IPC vide order dated 19.12.2006 (Annexure P8) passed by the Sub Divisional Judicial Magistrate, Malerkotla. The proceedings culminated in judgment of conviction and order of sentence dated 15.04.2011 (Annexure P2) passed by the Judicial Magistrate Ist Class, Malerkotla whereby the petitioners were convicted and sentenced for committing offence punishable under Sections 354 and 506 read with Section 34 IPC but they were acquitted of the offence punishable under Section 341 IPC.

The petitioners preferred an appeal against their conviction and sentence before the Court of Sessions. The Sessions Judge, Sangrur, vide judgment dated 04.04.2012 (Annexure P3) set aside the impugned judgment and order dated 15.04.2011 and remitted the matter to the area Magistrate with a direction to amend the charges against the appellants (petitioners herein) as per allegations in the report submitted under Section 173(2) Cr.P.C. and dispose of the case as per procedure known to law within a period of four months on receipt of the order.

Subsequent thereto, the trial Court framed amended charge vide order dated 09.05.2013 (Annexure P4). It is argued with vehemence that after framing of amended charge, the petitioners were not afforded an opportunity to cross examine complaint Jasbir Kaur, causing serious prejudice to their right to defend amended charge qua offence punishable under section 341 IPC. It is further submitted that plea of the petitioners in this regard was rejected vide order dated 24.09.2013 (Anenxure P5) as well as while disposing of application filed under Section 311 Cr.P.C vide order

dated 07.11.2013. It is further submitted that as in the initial charge sheet, there was no charge with regard to wrongful restraint of Ranjit Singh, husband of the complainant Jasbir Kaur which was added in the amended charge sheet dated 09.05.2013 (Annexure P4), the petitioners certainly have the right to cross examine the complainant after amendment of the charge in regard to offence punishable under section 341 IPC.

Counsel for respondent No. 2/complainant has submitted that as the petitioners have already cross examined complainant Jasbir Kaur knowing fully well the allegations raised in the FIR as well as in the report submitted under Section 173 (2) Cr.P.C., their prayer to further cross examine the complainant is nothing but an effort to prolong the proceedings pending for the past more than one decade. In addition, it is argued that as the petitioners have already availed of appropriate remedy by filing a separate application under Section 311 Cr.P.C, for the same relief, they cannot be allowed to challenge order dated 24.09.2013.

I have heard Counsel for the parties and perused the paper book particularly the charge (Annexure P8) framed on 19.12.2006 and amended charge sheet dated 09.05.2013 (Annexure P4).

A comparison of the initial charge sheet vis-a-vis amended charge sheet would make it evident that with regard to charge for committing offence punishable under Section 341 read with Section 34 IPC, originally the petitioners were charged for causing wrongful restraint to complainant Jasbir Kaur but in the amended charge sheet, they have been charged for causing wrongful restraint to complainant Jasbir Kaur and her husband Ranjit Singh. As the petitioners were not initially charged for causing wrongful restraint to Ranjit Singh, husband of the complainant,

there was no reason for them to cross examine the complainant in regard to causing wrongful restraint to Shri Ranjit Singh.

Taking into consideration the amendment made in charge qua offence punishable under Section 341 IPC, to achieve underlying purpose of one of the cardinal principle of administration of criminal justice that the accused must get a fair opportunity to defend himself, the petitioners are entitled to further cross examine complainant Jasbir Kaur but the same would be limited only qua offence punishable under Section 341 IPC.

For the foregoing reasons, the petition is partly allowed in the aforesaid terms.

Counsel for the complainant has submitted that he would ensure presence of the complainant before the Court below on the date already fixed *i.e.* 29.04.2017. The trial Court shall ensure that cross examination of the complainant is completed on that date. Further, every endeavour would be made to dispose of the proceedings expeditiously as the same are pending for the past more ten years.

However, nothing stated here-in-before shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

16.03.2017
mohan bimbira

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