

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-41632 of 2014

Date of decision:4.12.2017

Harjit Singh and others

...Petitioners

v.

State of Punjab and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. K.B. Raheja, Advocate for the petitioners.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab
for the respondent-State.

Mr. Raman Goklaney, Advocate for respondent No.2.

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Inderjit Singh, J.

The petitioners have filed this petition under Section 482 Cr.P.C. for quashing of impugned order dated 29.10.2014 (Annexure-P.3) passed by learned Additional Sessions Judge, Ferozepur, whereby the learned Additional Sessions Judge has wrongly and illegally accepted the revision of the respondent and ordered to frame the charges for the offences under Sections 308, 325, 323, 427 and 380 read with Section 34 IPC.

Notice of motion was issued in this case.

Ms. Simranjeet Kaur, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Raman Goklaney, learned Advocate has appeared for respondent No.2 and

contested this petition.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

From the record, I find that Dalgir Singh-respondent got recorded the statement as a cross-version to the FIR No.115 dated 24.9.2013 registered for the offences under Sections 324, 323, 148 and 149 IPC.

In the statement, Dalgir Singh-respondent stated that he had taken a shop five years back on lease @₹5 Lakhs from Mohinder Singh for a period of ten years. Five years period is still remained, but Mohinder Singh is trying to get the shop vacated in forcible manner. On that day at about 9.15 a.m., when the complainant with his brother Jagroop Singh reached at the shop, accused persons, who were 20 to 25 in number were present there, out of which, a number of persons were unknown to them. They had thrown out the articles from the shop. When they (complainant party) restrained them, they did not agree and suddenly assaulted them. Lakha Singh gave a blow of rod on the ear of the complainant, Avtar Singh gave a blow of rod on the shoulder, Meeta Singh and Subheg Singh also gave blows of rods at his head. Sons of Harjit Singh, Meeta Singh gave blows of rods on his back and had taken ₹1 Lakh lying in his cash box, which was to be paid by him to some relative. They also caused a loss of medicines worth ₹2 Lakhs. It is also in the statement that they also damaged his fitting, cable, inverter and electric sub meter. They also broke open the locks lying on the shutter and threw out entire articles.

A perusal of the statement of the complainant in cross- version

no where shows that the injuries were given by the accused with an intention to kill them. Further more, at the time of arguments, it is admitted that there is one injury which is on the right forearm. The other injuries on the person of other members of the complainant party had been declared simple. No injury has been declared dangerous to life. A mere fact that there are simple injuries on the head itself will not constitute an offence under Section 308 IPC. The order of the learned Additional Sessions Judge accepting the revision petition and ordering to frame the charge under Section 308 IPC or giving finding that the offence under Section 308 IPC is made out are not as per law. The trial Court has framed the charges for the commission of the offences under Sections 325, 323, 427 and 34 IPC correctly. As regards the charge under Section 380 IPC, it is the case of the prosecution that no theft had been found to be committed as per the investigation.

Keeping in view the above facts that firstly no injury has been declared dangerous to life, secondly, even grievous injury has not been found on the vital part of the body and there is only one grievous injury and that is also on non-vital part of the body shows that *prima facie* the offence under Section 308 IPC is not made out at this stage. In the revision petition the court of Session cannot substitute its opinion and it has only to see the legality of the order passed by the learned Judicial Magistrate Ist Class and the Court of Session also cannot interfere in the revision petition lightly and in routine manner where the order passed by the learned Judicial Magistrate Ist Class is legal and as per law.

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Therefore, from the above discussion, I find merit in this petition and the same is allowed and the impugned order passed by the learned Additional Sessions Judge is not as per law and the same is set aside.

December 4, 2017.

(Inderjit Singh)
Judge

hsp

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