

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 109 of 2013 (O&M)
Date of decision : 24.10.2017

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Amarjit Singh and others

.....Petitioners

vs.

Rajinder Kumar

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Venæt Sharma, Advocate for the petitioners

Mr. Anupam Bhardwaj, Advocate for the respondent.

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H. S. Madaan, J.

This revision petition is directed against judgment/order dated 6.12.2012 passed by Additional Sessions Judge, Amritsar, vide which he had accepted the appeal preferred by the complainant against acquittal of accused Amarjit Singh, Avinash and Chinky, by the Court of Chief Judicial Magistrate, Amritsar and had remanded the case to the trial Court with a direction to frame charge in accordance with law and thereafter provide opportunities to the parties and then pass judgment afresh in accordance with law. The

complainant, who is a revision petitioner before this Court prays that the revision petition be accepted, the judgment passed by the Additional Sessions Judge, Amritsar, be set aside and judgment of Chief Judicial Magistrate, Amritsar, acquitting the accused be restored.

Briefly stated, the facts of the case are that complainant Rajinder Kumar had filed a complaint under Section 323/324/506/34 IPC against Amarjit Singh, Avinash and Chinky – accused on the assertions that complainant is a tenant in shop bearing private No. 34 forming part of Bharat Hotel Building, at Guru Nanak Market, Amritsar, under Amarjit Singh accused No.1 at monthly rent of Rs.1,200/-. However, litigation is pending between them; that on 6.7.2006 all the three accused formed an unlawful assembly and in furtherance of their common intention, assaulted the complainant at his shop at about 7.15 A.M., inflicting injuries on his person by means of sharp edged weapon/knife on his right elbow. The injury had been caused by Amarjit Singh accused on exhortation of his two co-accused Avinash and Chinky. As a matter of fact, Amarjit Singh had caught hold of complainant from his arm and given two kick blows on his right thigh putting him down on the ground. When the complainant raised alarm, Ashok Kumar and Sushil Kumar arrived at the spot. They intervened and rescued the complainant from the accused. Thereafter the accused ran away from the spot. As per version of the complainant he got himself medico legally examined from Civil Hospital, Amritsar. The matter was reported to the police but no action was taken, as the accused are influential persons.

Therefore the complainant filed a complaint in the Court of Chief Judicial Magistrate, Amritsar.

After recording of preliminary evidence all the three accused were ordered to be summoned to face trial under Section 323/34 IPC vide order dated 11.7.2008. The accused put in appearance and were admitted to bail. Notice of accusation for offence under Section 323 read with Section 34 IPC was served upon the accused to which they pleaded not guilty and claimed trial.

During the course of evidence, complainant examined Naresh Oberoi as PW-1, got his own statement recorded as PW-2, besides examining Dr. Kanwaljit Kaur as PW-3. With that his evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them, but they denied allegations contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence.

The trial Court had formulated following point for determination :-

“that as to whether on 6.7.2006 at about 7.15 A.M. In the area of Guru Nanak Market, Amritsar, accused Amarjit Singh, Avinash and Chinky present in the Court in furtherance of common intention of each other, voluntarily caused simple hurt on the person of Rajinder Kumar, complainant and thereby committed offence punishable under Section 323 read with

Section 34 of IPC.”

After hearing arguments, the trial Court acquitted the accused of the charge framed against them vide judgment dated 23.4.2012.

The complainant feeling aggrieved by the said judgment had preferred an appeal, which was heard and disposed of by Additional Sessions Judge, Amritsar, vide impugned judgment dated 6.12.2012, setting aside the judgment passed by Chief Judicial Magistrate, Amritsar, and remanded the case to the trial Magistrate as detailed above.

Thereafter, the accused feeling dissatisfied with the said judgment, have knocked at the door of this Court by way of filing the present revision petition.

Notice of the revision petition was given to the complainant-respondent, who had put in appearance.

I have heard learned counsel for the parties, besides going through the record and I am of the considered view that this revision petition is bound to succeed. It has to be kept in mind that after the criminal complaint was filed in the Court of Chief Judicial Magistrate, Amritsar, preliminary evidence was recorded, thereafter the accused were summoned to face trial for offence under Sections 323/34 IPC. The complainant did not challenge that summoning order contending that accused be also summoned for offence under Section 324 IPC. After the accused put in appearance, notice of accusation for offence under Section 323/34 IPC was served upon them. Even then complainant kept silent and did not challenge that

order agitating that charge for offence under Section 324 IPC be also framed against the accused. After the trial, the accused had been acquitted by the trial Court vide detailed judgment, for various reasons including unexplained delay of about 4 months in filing the complaint, there being only one superficial incised wound on the posterior aspect of forearm of complainant; that no other injury being there and not even a complaint of pain is mentioned in the MLR, non-submission of representation by the complainant to the higher police officers regarding alleged inaction of the lower police officials in taking, as regards his complaint; story of complainant being doubtful for various reasons, in as much as, PW-1 Naresh Oberoi has admitted in his cross examination that Landa Bazar where shop of the complainant is situated, opens at 10.30 A.M., therefore, the very presence of PW-2 Rajinder Kumar – complainant and PW-1 Naresh Oberoi at the place of occurrence at 7.30 A.M. in their shops becoming doubtful; a motive to file the complaint being there for the reason of civil litigation pending between the parties, as regards the shop in question of complainant.

The Additional Sessions Judge, Amritsar, remanded the case to the trial Court without any justifiable reasons, finding fault with the framing of charge, observing that charge for offence under Section 324 IPC should have been framed. It has to be kept in mind that in view of detailed discussion above, the complainant after filing of complaint till conclusion of the trial, is not shown to have been aggrieved by the framing of charge. The prejudice, if any, was to be caused to the accused. The accused could have come up with a plea

that the charge framed against him was defective but he did not do so. Learned counsel for the revisionist-accused has referred to authority *State of Andhra Pradesh vs. Thakkidiram Reddy 1998 AIR (SC) 2702*, by the Apex Court, wherein it was observed in paragraph 11 of the judgment, referring to Section 464 (1) Cr.P.C., which provides that no finding, sentence or order by the Court shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission, irregularity in the charge unless a failure of justice has in fact been occasioned thereby and under Section 465 Cr.P.C. no finding, sentence or order passed by a Court shall be reversed or altered by Court of appeal on account of any error, omission or irregularity in the proceedings unless a failure of justice has in fact occasioned. In paragraph 11, it has been observed as under:-

“11. This Court in [Willis \(William\) Slaney v. The State of Madhya Pradesh](#) [1955 (2) SCR 1140] elaborately discussed the applicability of [Sections 535](#) and [537](#) of the Code of Criminal Procedure 1898, which correspond respectively to [Section 464](#) and [465](#) of the Code, and held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be

established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Viewed in the context of the above observations of this Court we are unable to hold that the accused persons were in any way prejudiced due to the errors and omissions in the charges pointed out by Mr. Arunachalam. Apart from the fact that this point was not agitated in either of the Courts below, from the fact that the material prosecution witnesses (who narrated the entire incident) were cross examined at length from all possible angles and the suggestions that were put forward to the eye witnesses we are fully satisfied that the accused persons were not in any way prejudiced in their defence. While on this point we may also mention that in their examination under [Section 313](#) of the Code, the accused persons were specifically told of their having committed offences (besides others) under [Sections 148](#) and [302/149](#) IPC. For all these reasons we reject the threshold contention of Mr. Arunachalam.”

Learned counsel for the petitioner had further pressed into service authority **Abdul Sayeed vs. State of Madhya Pradesh** **2010 (4) Crimes 86**, by the Hon'ble Supreme Court of India, wherein it was observed that unless the accused is able to establish that the

defects in framing the charges has caused real prejudice to him; that he was not informed as to what was the real case against him; or that he could not defend himself properly, no interference is required on mere technicalities.

I find that these authorities have application to the present case. The Court of Additional Sessions Judge committed an error in upsetting well reasoned judgment passed by Chief Judicial Magistrate, Amritsar, by remanding the case back for fresh trial, when there was no reason or occasion to do so. Therefore, the revision petition is accepted and the impugned judgment passed by the Additional Sessions Judge, Amritsar is hereby set aside.

(H.S. Madaan)
Judge

24.10.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No