

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

CRR-3808-2014

Date of decision:-20.11.2017

Harbhajan Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Inderjit Sharma, Advocate
for the petitioners.

Ms.Samina Dhir, DAG, Punjab.

Ms.Gursharan Kaur Mann, Advocate
for the complainant.

H.S. MADAAN, J.

Accused Harbhajan Singh and his two sons namely Gagga @ Sukhwinder and Varinder Singh @ Rimpay, all of them being accused in FIR No.136 dated 11.5.1998 for the offences under Sections 379, 447, 341, 420, 467, 468, 471 and 120-B IPC, registered with Police Station Sadar, Gurdaspur were tried by Additional Chief Judicial Magistrate, Gurdaspur, who vide his judgment dated 6.8.2010 acquitted the accused of the charge framed against them.

Briefly stated, facts of the case as per prosecution story are that complainant Guro daughter of Fauju of Christian community, resident of village Sindwan Jamita, at that time residing at Farm of Keshav Behal

at village Hayat Nagar, Tehsil and District Gurdaspur had submitted a complaint dated 11.5.1998 to Senior Superintendent of Police, Gurdaspur contending therein that she had inherited the land measuring 12 Kanals 14 Marlas situated at village Sidhwa Jamita, of which she had been in cultivating possession; that she is residing with her daughter, son-in-law and children at the farm of Keshav Behal at Hayat Nagar; that wheat crop was sown in the area measuring 5 Kanals 6 Marlas having khasra No.324/2 on 5.5.1998; that complainant had visited those fields accompanied by her daughter Bholi and son-in-law Mohinder Masih and children finding that crop had already been harvested with the help of combine; that in the evening of 4.5.1998, Harjinder Singh disclosed the fact that crop had been harvested by accused Harbhajan Singh, Gangi, Rimpi and Ajaib Singh with the help of combine; that Sh.Balbir Singh, DSP Retd., uncle of Harbhajan Singh was also present at the time of harvesting of crop; the complainant went to the respectables of the village as well as Panchayat members seeking justice but to no effect; that a civil dispute between the parties had been pending, in which an injunction order dated 20.3.1998 had been passed in favour of defendants by Additional District Judge, Gurdaspur. An FIR was registered.

On completion of investigation, report under Section 173 Cr.P.C. for the offences under Sections 379, 447 read with Section 34 IPC with subsequently added offence under Sections 120-B, 420, 467, 468 and 471 IPC was filed. Complainant Guro had filed a private complaint against Harbhajan Singh, Gagga, Ravinder Singh and Balbir Singh for the offences under Sections 379, 447, 148, 149 IPC. Later on, it transpired

that accused accused Ajaib Singh son of Santa Singh and Balbir Singh, Retd. DSP of village Sidhwan Jamita had died. Vide order dated 12.9.2005, complaint case was clubbed with the police challan.

On presentation of challan in the Court of Additional Chief Judicial Magistrate, Gurdaspur copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Additional Chief Judicial Magistrate, Gurdaspur finding that charge for offence under Sections 379 and 447 read with Section 34 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as five witnesses, namely, ASI Rajesh Kumar as PW1, Sarup Singh as PW2, Harjinder Singh as PW3, Gurwak Singh as PW4 and Mohinder Masih as PW5.

Thereafter, the prosecution evidence was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that the case is result of biased investigation; that they are innocents and had been falsely involved in this case.

Accused did not lead evidence in defence.

Learned trial Magistrate formulated following points for

determination:

- (i) Whether on 4.5.1998 the complainant was in possession of the land measuring 12 Kanals 14 Marlas including including Khasra No.324/2 at village Sidhwa Jamita?
- (ii) Whether accused in furtherance of their common intention trespassed into the said land?
- (iii) Whether accused dishonestly removed the crop of the wheat of the complainant?
- (iv) Conclusion

After hearing arguments, learned trial Magistrate acquitted the accused of the charge framed against them directing that copy of judgment be placed on the complaint case.

Feeling aggrieved, the State had filed an appeal, which was disposed of by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur vide judgment dated 7.10.2014 observing as under:

It is well settled that for launching trial proceedings, framing of charge is mandatory in the criminal cases. Without putting the alleged offence committed by an accused, trial proceedings cannot be initiated. Section 240(2) Cr.P.C. reads as follows:-

“The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of

the offence charged or claims to be tried.”

So, the mandatory provisions have not been done. Therefore, this Court is unable to expressed its opinion without properly framing of charge against the accused and is of the considered opinion that it would be proper to remanded back this case to the concerned trial Court with the direction to launch trial proceedings only after serving charge-sheet upon the accused of the prima facie offences committed by them. Accordingly, the order is passed. Since the case is very old one and relates to the year 2005, the learned trial Court is directed to dispose off the matter within two months from the date of receipt of copy of this order, as per rules. Parties are directed to appear before the learned trial Court on 27.10.2014. Trial Court record, alongwith copy of this order, be returned and the appeal file be consigned to the record room.

The accused felt aggrieved by that order of remanding the case to the trial Court and have approached this Court by way of filing the revision petition, notice of which was issued to the respondent – State, which put in appearance through counsel. The complainant has also appeared through counsel.

I have heard learned counsel for the parties and I find that the revision petition has got merit and order passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur remanding the

case is not sustainable.

Learned counsel for the revision petitioner has argued that prejudice, if any, as a result of non-framing of charge was caused to the accused but accused are not complaining but learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur by strange reasoning observing that formal charge had not been framed, remanded the case back to the trial Magistrate, which was uncalled for. He has drawn my attention to Section 464 Cr.P.C., which for ready reference is reproduced as under:

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are

such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

He has further referred to citation **Main Pal Versus State of Haryana, 2010 AIR(SC) 3292**, wherein Hon'ble Apex Court while dealing with the aspect of error in charge had observed that when the accused was charged having committed offence against 'A' but on evidence he is convicted for committing offence against 'B' without a charge being framed in respect of it, the accused will be prejudiced resulting in failure of justice, but there will be not produce or failure of justice where there was an error in the charge and the accused was aware of the error. He further referred to authority **Alister Anthony Pareira Versus State of Maharashtra, 2012 (1) R.C.R.(Criminal) 524**, wherein Hon'ble Apex Court had observed that a finding or sentence of a Court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Learned counsel for the petitioners further referred to citation **Darbara Singh Versus State of Punjab, 2012 CrL.L.J. 4757**, wherein it was observed that an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed or that there was some irregularity or omission or misjoinder of charges, unless the Court comes to the conclusion that was also, as a consequence, a failure of justice.

After hearing the learned counsel for the parties and going through the record, I find that the prosecution had led evidence, the prosecution witnesses were cross-examined on behalf of the accused,

statements of accused were recorded, the accused were given opportunity to lead evidence and thereafter after hearing arguments, the case had been decided ending in acquittal of the accused. The accused do not claim that they are victim of some prejudice or it is a case of failure of justice. Similarly, the prosecution can certainly not come up with such a plea. No prejudice is shown to have been caused to the prosecution by omission to frame charge. Thus in view of the provisions of Section 464 Cr.P.C. and citations referred to by learned counsel for the revision petitioners mentioned above, no case was made out to remand the case.

The impugned order passed by Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur remanding the case is set aside. But since he has not decided the appeal filed by the State on merits, consequently, the revision petition stands allowed. He is directed to decide the same on merits. The needful be done at the earliest since the matter has got considerably prolonged, preferably within a period of two months from the date of receipt of certified copy of this order.

The parties are directed to appear before the trial Court on 6.12.2017.

20.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No