

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRR No. 974 of 2015

Date of Decision: 06.10.2017

Jagdish Singh @ Bhola

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Vishal Deep Goyal, Advocate
for the petitioner.

Ms. Manjri Nehru Kaul, Addl. AG, Punjab.

SURINDER GUPTA, J.

This is revision petition filed by Jagdish Singh @ Bhola against order dated 12.12.2014 passed by Sessions Judge, Kapurthala whereby he has been charge-sheeted for offence punishable under Section 109 of Indian Penal Code (for short 'IPC') in case bearing FIR No. 38 dated 01.04.2013, registered at Police Station Phagwara, District Kapurthala for offences punishable under Sections 302, 392, 307 read with Section 34 IPC and Section 25 of the Arms Act (Sections 353, 186 and 109 IPC were added later on).

2. Impugned order dated 12.12.2014 reads as follow:-

“Accused Tarvinder Singh @ Talli, Pushpinder Singh @ Noni, Rajinder Singh @ Mintu, Palwinder Singh @ Pinda and Jagdish Singh @ Bhola produced by the jail authorities. Sh. H.S. Sandhu, Advocate has filed power of attorney on behalf of accused Jagdish Singh @ Bhola.

Arguments heard with regard to the question of charge.

I have gone through the record pertaining to the case in hand. From perusal of the report u/s 173 Cr.P.C. and the documents attached therewith, a prima facie case under sections 186/353/392/302/307/109 IPC is made out against the accused. They have been charged accordingly to which they pleaded not guilty and claimed trial.

Now, PWs be summoned for 05.01.2015.”

3. Five accused are facing trial including the petitioner. While other four accused have been charge-sheeted for offence punishable under Sections 353/392/302/307 read with Section 34 IPC, the petitioner has been charge-sheeted only for offence punishable under Section 109 IPC. The charge framed against petitioner reads as follows:-

“Lastly before 01.04.2013, you accused namely Jagdish Singh @ Bhola abetted the commission of murder of ASI Gurdev Singh No. 804/Kpt by intentionally supplying the firearm to your co-accused Palwinder Singh @ Pinda, you Jagdish Singh @ Bhola, thus thereby committed an offence punishable under Section 109 of the Indian Penal Code and within the cognizance of this Court.”

4. Learned counsel for the petitioner has argued that the police has incorporated the name of petitioner vide *rapat* no. 17 dated 01.12.2013 recorded on the statement of of Rajinder Singh @ Mintu and Palwiinder Singh @ Pinda. Statements of aforesaid persons recorded on 01.12.2013 have been produced on file as Annexures P-1 and P-2, wherein they have nowhere stated that firearm used in the crime was supplied to them by the petitioner. Copy of challan supplied to petitioner contains not a iota of

evidence to suggest the commission of offence punishable under Section 109 IPC by petitioner. There is no direct or circumstantial evidence to this effect in the copy of challan supplied to the petitioner.

5. Learned State counsel when confronted with the submission of learned counsel for the petitioner submits that the police has not recorded any statement of Rajinder Singh @ Mintu and Palwinder Singh @ Pinda to the effect that they were supplied firearms by petitioner. However, during interrogation they have disclosed to investigating officer that the firearm used in the crime was supplied to them by the petitioner with the assurance that he will protect them if they use the same to kill any person. He recorded this fact in the case diary but did not record statements of aforesaid persons separately. When confronted as to what evidence the prosecution intends to produce to prove the charge framed against the petitioner, she could not refer to any document or oral statement. However, she has cited judgment of Hon'ble Apex Court in case of **Mehboob Ali and anr. vs. State of Rajasthan, 2015 (4) RCR (Criminal) 944.**

In the aforesaid citation, the principle enunciated in the provisions of Section 27 of the Evidence Act have been discussed. However, the same are not applicable in the facts and circumstances of the present case. There is no statement of petitioner or co-accused recorded by the police under Section 27 of the Evidence Act indicting the petitioner for offence punishable under Section 109 IPC. Learned trial Court while framing the charge has not looked into this aspect and has framed the charge against petitioner in a mechanical manner even without discussing as to how the charge against petitioner is made out on the basis of evidence attached with final report.

Keeping in view above facts, I find merits in the present petition and the same is allowed. Impugned order dated 12.12.2014 whereby petitioner has been charge-sheeted for offence punishable under Section 109 IPC is set aside.

September 06, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No