

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

**CRR No. 4678 of 2016 (O&M)**

**Date of Decision: 25.10.2017.**

**Gurpreet Singh @ Babbu and others**

**.....Petitioners**

**vs.**

**State of Punjab and another**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Bikramjit Aroura, Advocate,  
for the petitioners.

Mr. S.S. Sandhu, AAG, Punjab,  
for respondent no. 1.

Mr. Amit Arora, Advocate,  
for respondent no. 2.

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**AMOL RATTAN SINGH, J.**

**CRM-39526-2016**

For the reasons, stated in paragraph 2 of the application, the delay of 40 days in filing the present criminal revision petition, is condoned.

The application stands disposed of.

**CRM-39525-2016**

The application is allowed.

Filing of certified copies of order of framing charge dated 05.08.2016 and Annexures P-1 to P-3 is exempted.

**CRR No. 4678 of 2016**

This revision petition filed under Section 401 of the Cr.P.C., challenges the order of the learned trial Court (Additional Sessions Judge, Tarn Taran), dated 05.08.2016, framing charges against the seven petitioners, under Sections 307/452/336/323/506/148/149 IPC & Section 25 of the Arms Act, upon Criminal Complaint no. 42/2012 having been filed against the petitioners by their cousin Talwinder Singh, resident of village Palasaur, Tehsil and District Tarn Taran, alleging the commission of the aforesaid offences.

2. The background of the complaint is that due to a property dispute between the parties, as per the allegations against the petitioners, at about 6:00 p.m. on 08.08.2012, they came to the *Haveli* occupied by the complainant and his brother, with petitioners no. 1 and 2, Gurpreet Singh and Amarpal Singh, allegedly armed with .32 bore revolvers, petitioner no. 3 Karambir Singh alias Manna armed with a *kirpan*, petitioner no. 4 Gurinder Singh armed with a .315 bore rifle, petitioner no. 5 Ajaypal Singh armed with a *kirpan* and petitioners no. 6 and 7 Gagandeep Singh and Amandeep Singh armed with one *dang* each.

3. Petitioner Karambir Singh is stated to have raised a *lalkara* to teach the complainant and his brothers, Harjinder Singh and Maninder Singh, a lesson for not allowing them to transfer 28 'killas' of land in their name and to take possession of it, and that none of them should be spared.

Upon the aforesaid exhortation, petitioners Gurpreet Singh alias Babbu and Amarpal Singh, are stated to have fired two shots from their respective weapons simultaneously, towards the complaint, his brother and nephew, with an intention to kill them. The attacked party, in order to save themselves, are stated to have first laid down on the earth, after which they ran

to save their lives towards the side of a drain, with petitioner Gurinder Singh at that time alleged to have fired a .315 bore rifle shot towards them, again with an intention to kill them. However, though the bullet did not hit the complainant party, they still fell down and thereafter hid themselves behind the trees and were attacked there by all the accused.

4. Petitioner Ajaypal Singh is stated to have caused an injury on the right side of the abdomen of the complainant with the reverse side of his *kirpan*, petitioner Karambir Singh is alleged to have caused an injury on the left side of the neck of the complainant, also with the reverse side of a *kirpan*, with Gagandeep Singh having caused an injury below the left eye of the complainant with his *dang*. Petitioner Amandeep Singh is stated to have caused an injury on the back of the head of the complainant.

It was also stated that one Talwinder Singh, his brother and his nephew, and Nirvail Singh son of Darbara Singh, were coming on the motorcycle to the *Haveli* to meet the complainant, but on seeing the attack, they too remained behind the trees, seeing the accused armed with weapons.

5. As per the complainant, the aforesaid persons also saw the whole occurrence and upon all of them having raised their voices asking for help, the accused, seeing that passersby were gathering on the spot, ran away with their weapons and allegedly, then also fired a shot in the air, with threats to kill the complainants.

One Jaspal Singh son of Kulwant Singh is also stated to have witnessed the incident, but none of the witnesses could actually help the complainants, as the petitioners were all armed with deadly weapons.

6. It is further stated in the complaint that the matter was reported to the police at Police Post Dhora by the complainant party, but the person in-

charge of the police post completely refused to 'issue a *docket*' to the complainant party, allegedly due to political pressure from the side of the accused.

7. In the aforesaid background, the complainant Talwinder Singh got himself medically examined from the Civil Hospital at Tarn Taran, after getting permission from the Court of the learned Chief Judicial Magistrate, Tarn Taran.

Thereafter also they are stated to have gone to the Police Station, City Tarn Taran, with the medical examination result, but with the SHO again allegedly refusing to help them due to political pressure.

8. On 13.08.2012, the father of the complainant filed an application for an inquiry before the Senior Superintendent of Police, Tarn Taran, which was marked to the Deputy Superintendent of Police, with the accused having got registered a case against their father, i.e. Hardev Singh and his family members, again allegedly due to political pressure, with the said case (FIR) stated to have been registered on a wholly fabricated occurrence.

9. On the aforesaid allegations, the complaint was filed on 16.09.2012, which was considered by the learned Chief Judicial Magistrate, Ist Class, Tarn Taran, and vide her order of the same date, the present petitioners were ordered to be summoned to stand trial for the alleged commission of the offences first referred to hereinabove.

The offence under Section 307 IPC being triable by a Court of Sessions, the matter was referred to that Court, which vide a separate order of the same date (other than the order framing charges), noticed the arguments raised before it on behalf of the petitioners-accused, but rejecting their contentions, the charges were framed as aforesaid.

10. Though an argument was raised before that Court that firstly, if there was an intention to kill the complainant party, the injuries on the person of the complainant would not be on non-vital parts of the body, with the reverse side of the *kirpan* or with a blunt weapon like a *dang* and further, that if the intention had been to kill the complainants, then even after they were allegedly encircled there would be no reason to simply not shoot at them, the learned Additional Sessions Judge rejected those arguments by holding that once there were allegations of gun shots fired, a *prima facie* case under Section 307 IPC would be made out along with other offences (under the IPC), as also for the offence punishable under Section 25 of the Arms Act.

11. Hence, the following charges were framed by the learned Additional Sessions Judge:-

*“That on 08.08.2012 at 6:00 p.m. in the area of village Palasaur you the abovesaid accused were member of unlawful assembly and you all were armed with deadly weapon and committed offence of rioting and thereby you committed an offence punishable under Section 148 IPC which is within my cognizance.*

*That on the same day, time and place, you the abovesaid accused committed tress pass by entering into the house of Talwinder Singh used as human dwelling and thereby you committed an offence punishable under Section 452 IPC which is within my cognizance.*

*That on the same day, time and place, you the abovesaid accused caused injuries to Talwinder Singh complainant with an intention to kill him and thereby you committed an offence punishable under Section 307 IPC which is within my cognizance.*

*That on the same day, time and place, you the accused Amarpal Singh and Gurinder Singh in furtherance of common intention of your co-accused fired shots towards*

*Talwinder Singh and thereby you accused Amarpal Singh and Gurinder Singh committed an offence punishable under Section 336 IPC whereas your co-accused committed offence under Section 336 read with Section 149 IPC which is within my cognizance.*

*That on the same day, time and place, you the accused Ajaypal Singh, Karambir Singh, Gagandeep Singh and Amandeep Singh in furtherance of common intention of your co-accused gave hurts to Talwinder Singh and thereby you accused Ajaypal Singh, Karambir Singh, Gagandeep Singh and Amardeep Singh committed an offence punishable under Section 323 IPC whereas your co-accused committed offence under Section 323 read with Section 149 IPC which is within my cognizance.*

*That on the same day, time and place, you the abovesaid accused committed criminal intimidation by threatening Talwinder Singh with injury and thereby you accused committed an offence punishable under Section 506 IPC which is within my cognizance.*

*That on the same day, time and place, you the abovesaid accused Gurpreet Singh and Amarpal Singh fired shots from your .32 bore revolvers towards Talwinder Singh and thereby you accused committed an offence punishable under Sections 24/54/59 of the Arms Act, which is within my cognizance.*

*And I hereby direct that you be tried by this Court on the above stated charges.”*

12. Thus, this petition has come to be filed, challenging the order framing the charges as aforesaid.

13. Upon specific query to learned counsel for the petitioners, as to why a charge under Section 307 IPC could not have been framed and as to why such charge framed should be quashed, when as per the MLR there is an injury found at the back of the head of a delicate part (on the skull 15 cm from

left external ear), which though a simple injury, if the blow had hit hard, it could have been a fatal injury, learned counsel for the petitioners had submitted that the petitioners were alleged to have been carrying firearms, but firstly, no photographs were taken to show that any shots were fired as had hit even a wall and no projectile was recovered from the spot. Secondly, he submitted that with *kirpans* alleged to be in the hands of the petitioners, if there was an intention to kill, there would have been no reason to hit the complainant from their reverse side, as is stated in the complaint itself. Hence, even if an intention to injure was made out (without admitting to the same), there was no intention to kill in any case.

He further submitted that there is a delay in the recording of the MLR, inasmuch as, the occurrence is stated to have taken place on 08.08.2012 at 9.00 p.m., whereas the MLR is seen to be recorded on 09.08.2012 at 3.20 p.m.

14. Mr.Amit Arora, learned counsel for respondent no. 2, on the other hand, referred to various judgment, including (i) AIR 1977 SC 2018, State of Bihar vs. Ramesh Singh, (ii) 2000 (4) RCR (Criminal) 517, State of Delhi vs. Gyan Devi, (iii) 1997 (2) RCR (Criminal) 634, State of Maharashtra vs. Priya Sharan Maharaj, (iv) 2001 (1) RCR (Criminal) 334, Ram Kumar Laharia vs. State of Madhya Pradesh, (v) 2000 (1) RCR (Criminal) 523, State of Madhya Pradesh vs. S.B. Johari and (vi) 2005 (1) RCR (Criminal) 297, State of Orissa vs. Debendra Nath Padhi, to submit that at the stage of framing of a charge, the Court is not to see the defence to be taken by the accused but only as to whether, *prima facie*, a charge is made out in respect of the offence alleged to have been committed.

Hence, the contention is that at this stage, with the MLR showing that there is a head injury at a delicate point, this Court would not quash the charge framed for the alleged commission of an offence punishable under Section 307 IPC, which would be a matter to be gone into by the trial Court, to thereafter conclude as to whether the petitioners are guilty of having committed such an offence or not.

15. Mr. Aroura, learned counsel for the petitioners, in rebuttal submitted that, as a matter of fact, what the trial Court considered at the time of framing of the charge for the commission of an offence punishable under Section 307 IPC, was not the blow on the reverse side of the head of Talwinder Singh, but the fact that firearms were stated to have been used, which possibly can show an intention to kill.

He therefore reiterated that with no projectile recovered and no bullet holes even shown to have been exhibited on any trees or walls, by way of any photographs etc. by the complainant, the trial Court completely misdirected itself as regards at least the charge under Section 307 IPC.

16. Having considered the aforesaid arguments, though undoubtedly at the stage of framing of a charge, only a *prima facie* opinion is to be formed by the trial Court, as regards the offences made out at that stage against the accused, yet, in the opinion of this Court, what Mr. Aroura, learned counsel for the petitioners has argued, is wholly rational, inasmuch as, even if it is presumed that the police did not do their duty in even registering an FIR, and in thereafter taking photographs or attempting to collect any fire cartridges/bullets/empty shells from the spot, what is not 'digestible' from the allegations, is that three persons armed with deadly fire arms like two .32 bore revolvers and one .315 bore rifle, if they had any intention to kill the

complainant or his companions, would only attack the complainant party with blunt weapons, and would not simply fire at them from close range, even after they had reached the place where the complainants were allegedly hiding behind trees.

Very obviously, if the version of the complainants' is to be believed, that there was an intention by the petitioners to kill them, by firing shots at them while they were at a distance, then there would be no reason for them to not fire directly at them when they were close up to the complainants, especially as they are stated to have hit them with *dangs* (sticks) and the reverse sides of their *kirpans*. Thus, again obviously, even as per the complainants' version, the attack took place at close quarters, (if the complainants' version is to be believed), and hence, if there was an intention to kill, in my opinion either gun shots would have been fired straight at the complainant party, or the attack would not have been with the reverse side but the sharp side of the *kirpans*.

17. Hence, in the opinion of this Court, at least the offence punishable under Section 307 IPC is not made out against the petitioners.

Consequently, this petition is allowed to the extent that the impugned order of the learned Additional Sessions Judge, dated 05.08.2016, framing a charge against the petitioners under Section 307 IPC is set aside.

However, as regards the offences punishable under Sections 148, 452, 506, 336/149 and 323/149 IPC and Section 25 of the Arms Act, the charges framed are not interfered with by this Court, with the trial to now proceed before the competent Court as regards those charges.

18. It is made clear that nothing stated hereinabove, even as regards the remaining charges against the petitioners, shall be taken to be any

comment by this court on the merits of those charges, which, naturally, would  
be gone into entirely by the trial Court itself.

October 25, 2017  
nitin/davinder kumar

(AMOL RATTAN SINGH)  
JUDGE

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | No. |