

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

**CRR No.753 of 2017 (O&M)
Decided on: 21.11.2017**

Jarnail Singh and others

....Petitioners

Versus

Jaswinder Singh and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Sarika Gupta, Advocate
for the petitioner.

Mr. Arnav Sood, Advocate
for respondent No.1.

Mr. A.P.S. Gill, DAG, Punjab
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting-aside the order dated 10.01.2017 (Annexure P1) vide which charges were framed against the petitioners under Section 326 of the Indian Penal Code (in short 'IPC') in FIR No.70 dated 15.07.2011 registered under Sections 326, 324 read with Section 34 of the Indian Penal Code (in short 'IPC') as well as in the complaint No.133/08 filed by the respondent under Sections 326, 325, 324, 323, 148 and 149 IPC.

Brief facts of the case are that on 01.06.2008, there was a fight between the petitioner side and the complainant side and the petitioners got FIR No.40 dated 02.06.2008 registered against the complainant/respondent No.1 and his other co-accused at Police Station

Bullowal, District Hoshiarpur. Later on, respondent No.1 filed a cross complaint No.133/08 with the allegations that the petitioner and others have caused injuries to the complainant party.

After recording of the preliminary evidence, the trial Court summoned the petitioner to face trial under Sections 326, 325, 324 323 and 149 IPC vide order dated 05.06.2014. Thereafter, in the pre-charge evidence, the complainant examined himself as PW1 and Dr. R.P. Saron as PW2.

The trial Court vide order dated 23.08.2016 charge-sheeted the petitioners under Sections 326, 325, 324, 323, 148 and 149 IPC. Thereafter, further evidence was led and on the application filed by the complainant, the charges were amended vide impugned order dated 10.01.2017. A perusal of the order dated 23.08.2016 show that charges were framed under Sections 323, 149 IPC against 07 accused persons namely Jarnail Singh, Deepa, Harbhajan Kaur, Mangal Singh, Jassa Singh, Prem Singh and Pindi whereas additional charge under Section 326 read with Section 149, 324 read with Section 149 and 325 read with Section 149 IPC was framed against the petitioner – Jarnail Singh whereas in the order dated 10.01.2017 when charges were again framed/amended, it is ordered that all the accused persons i.e. 07 persons named above along with one Sukha who has already been declared proclaimed offender and one Nihag Singh who has already expired have also been charge-sheeted as shown in the array of respondents in this order and as such, it appears that the charges have been framed against 09 persons. A careful perusal of this order further show that the amendment in the charge against all the persons is that

instead of framing charge under Section 323 read with Section 149 IPC which was framed vide order dated 23.08.2016, the charge was amended and now it is under Section 323 read with Section 148 IPC. While amending the charge against the petitioner – Jarnail Singh, it is mentioned that *“he in furtherance of common object of unlawful assembly with co-accused Sukha (since proclaimed offender)”* committed offence and, therefore, the charge was accordingly amended under Section 326 read with Section 148 IPC whereas in the earlier order dated 23.08.2016 the name of co-accused Sukha was not there. Similarly, name of Sukha was added while amending charge under Section 324 read with Section 149 IPC and additionally co-accused Deepa along with remaining co-accused and with reference to Sukha (since P.O.), the charge under Section 325 IPC was amended that they all have caused grievous hurt to Harinder Singh.

Counsel for the petitioners has challenged the impugned order on the following grounds:-

A. *The amendment of charge from Section 323 read with Section 149 IPC to Section 323 read with Section 148 IPC at this stage is not sustainable.*

B. *While amending the charge under Section 326 IPC, it has been added that the petitioner – Jarnail Singh, in furtherance with common object of lawful assembly with co-accused Sukha (since P.O.) caused grievous hurt to Jaswinder Singh and in the order it is mentioned that accused – Sarabjit Singh committed an offence punishable under Section 326 IPC whereas there is no person by the name Sarabjit Singh named as an accused in the complaint. Similarly, the amendment of charge under Section 323 IPC adding the name of Sukha who is a*

proclaimed offender at this stage is not sustainable and it is also stated that addition of charge against accused Deepa in furtherance of common object with Sukha (since P.O.) for causing grievous hurt to Harinder Singh, at a belated stage is not sustainable.

C. It is further submitted that while amending the charge the signatures of Jarnail Singh and Deepa were obtained whereas in the order dated 10.01.2017, the trial Court granted exemption of personal appearance of accused – Jarnail Singh and Khajan Singh @ Kuldeep Singh @ Deepa. It is also stated that on the order she dated 10.01.2017 adjourning the case after granting exemption to these 02 persons, 05 persons have signed which show that Jarnail Singh and Kuldeep Singh @ Deepa were not present, however, in the order framing charges their presence is marked and their signatures are obtained to show that the trial Court has not applied its judicial mind.

On the other hand, counsel for the respondent No.1 has stated that the charges were amended on 22.12.2016 and no objection of all the accused persons were obtained as even on that date.

In reply, the learned counsel for the petitioner submits that there was an application for granting exemption from personal appearance of petitioner – Jarnail Singh/accused and, therefore, the petitioner – Jarnail Singh has never consented for no objection. It is further submitted that once co-accused Sukha is declared proclaimed offender and accused – Nihag has since died, there was no occasion for the trial Court to frame charges against these 02 persons on 10.01.2017.

After hearing counsel for the parties and on perusal of the trial Court record, I find that at page 69 of the trial Court, while

recording the proceedings on 22.12.2016, the personal appearance of Jarnail Singh was allowed for that date, however, all the 07 persons have signed including Jarnail Singh regarding the no objection to amendment of charges. On the next date i.e. 10.01.2017, the proceedings recorded on the same page, exemption was granted to 02 persons namely Jarnail Singh and Kuldeep Singh @ Deepa and signatures of 05 accused persons are there excluding Jarnail Singh and Deepa. A perusal of the charge-sheet dated 10.01.2017 starting from page 93 to page 99 of the trial Court record show that amended charge-sheet has been framed after obtaining signature of Jarnail Singh and Deepa, as well. It is also apparent at page 93 that the amended charges are framed against 09 persons including Sukha who is declared as proclaimed offender and Nihag Singh who is already dead as noticed in the earlier order of framing charges dated 23.08.2016 (at page 83 – 85 of the trial Court record). Further, it is mentioned in the impugned charge-sheet at page 95 that accused – Sarabjit Singh has committed an offence punishable under Section 326 IPC whereas there is no person named Sarabjit Singh in the array of respondents/accused in the complaint.

Though, from the perusal of the trial Court record, it is apparent that the trial Judge has dealt with the case in a very casual manner and it require an explanation, however, considering the fact that it will delay the proceedings of the trial as the original record has been summoned in pursuance to the notice of motion order dated 02.03.2017, no further action is taken to avoid further delay.

In view of the above, the present revision petition is

allowed, the order dated 10.01.2017 (Annexure P1) is set-aside and the matter is remanded back to the trial Court to pass afresh order, in accordance with law after hearing both the counsel for the parties.

21.11.2017

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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No