IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.4279 of 2018
Date of Decision:27.03.2018

Mehtab Singh and others

.....Petitioners

Vs

State of Punjab

....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. Hittan Nehra, Addl. A.G., Punjab.

****

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this petition under Section 482 Cr.P.c. for quashing of order dated 15.11.2017 passed by the Judicial Magistrate Ist Class, Dhuri vide which case was committed to the Court of Sessions under Section 307 IPC and order/chargesheet dated 15.01.2018 passed by the Addl. Sessions Judge, Sangrur vide which revision petition against the order of committal was dismissed and charges were framed against the petitioners in FIR No.25 dated 11.03.2016 under Sections 148, 341, 323, 427, 307 read with Section 149 IPC and Section 25/54/59 of the Arms Act.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[2]. The FIR in question was registered in the Police Station Sherpur, District Sangrur against the petitioners and others on the statement of complainant-Achhra Singh. The complainant stated that he was a Panchyat Member. On the date of lodging of FIR, there was Bhog ceremony on account of death of Smt. Beant Kaur in Gurudwara at about 1.30 p.m., where Sant Hakam Singh and Maninder Singh of other village had come to attend the Bhog ceremony. After the Bhog ceremony, when the complainant reached near the vehicle, outside the gate of Gurudwara, then Mehtab Singh Ex.-Sarpanch, Ram Singh, Kuljit Singh @ Sunny, Puran Singh, Happy, Jagroop Singh @ Roop, Darshan Singh, Gurjant Singh @ Janta, Beant Singh, Achhra Singh, Harpreet Singh @ Happy, Pila Singh @ Chamkila, Dhanvir Singh and Jagga Singh residents of village Gurbakahspura were standing with deadly weapons like dandas, sticks and revolvers. They encircled Sant Hakam Singh, who was with the complainant and asked as to why he had made a speech in Gurudwara as per his own wish, whereupon Sant Hakam Singh tried to made them understand, but all of the aforesaid persons became annoyed and opened attack on the complainant party with an intention to kill. Accompanions of Sant Hakam Singh immediately took him inside the Gurudwara. Complainant was caught hold by the

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

party of Mehtab Singh and thereafter Kuljit Singh @ Sunny dealt an iron blow on his right side of head with an intention to kill him. The complainant fell on the ground thereafter Dhanvir Singh dealt a dang blow on his head. Thereafter Jaggi Singh dealt a dang blow on left side of waist of the complainant. When the complainant changed his side, then Pila Singh @ Chamkila gave a dang blow on his left shoulder and the complainant became unconscious. Megham Singh and Ram Singh while holding revolvers in their hands were saying that today the complainant-party be not allowed to go out of the village. The cause of grudge was an inquiry against Mehtab Singh was being conducted at the instance of complainant party by the Panchayat Department and the accused party was fighting a case against Sant Hakam Singh before the Court regarding land of Dera. On that day, the assailants had gathered in order to kill the complainant party, but they were saved. The complainant was admitted by Jagir Singh in Civil Hospital, Dhuri. The window panes of vehicle of Sant Hakam Singh were broken by Mehtab Singh and others.

[3]. The complainant received four injuries with blunt weapon, out of which injuries no.1 and 2 were kept under observation subject to X-ray report, and injuries no.3 and 4 were declared to be simple in nature.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[4]. During investigation, the police also recorded the statement of Sant Hakam Singh under Section 161 Cr.P.C. Perusal of his statement would show that the accused party had also fired upon him, though the fire did not hit him. Sant Hakam Singh stated that he was doing religious service to the Society. When after attending the Bhog ceremony of Beant Kaur on 11.03.2016 at about 1.15 p.m., he along with his accompanions i.e. complainant came out of the Gurudwara gate, then in a pre-planned manner Mehtab Singh Ex.Sarpanch along with others residents of Gurbaxpura were present in a white coloured vehicle duly armed with deadly weapons like *dandas*, rods and revolvers. They encircled Sant Hakam Singh and asked him as to why he had come to Gurudwara to deliver the speech. When Sant Hakam Singh tried to make them understand, they became aggressive and opened attack with dandas, dangs and rods. The accompanions of Sant Hakam Singh rescued him and took him into the Gurudwara. Mehtab Singh and his accompanions caught hold of Achhra Singh and inflicted injuries upon him and also caused damage to the vehicle of Sant Hakam Singh. Thereafter they went away from the spot. Sant Hakam Singh came out of the Gurudwara from the back door and took motorcycle of Gurmail Singh, which was being driven by Raghvir Singh. When they were going to Dera Jhirri, then on the way

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

from the side of cremation ground, Mehtab Singh Ex. Sarpanch, Ram Singh, Kuljit Singh, Roop Singh, Puran Singh and 3-4 other persons were standing near the wall of cremation ground. After raising *lalkara*, they stated that in the Gurudwara Sant Hakam Singh was saved, but now they will not spare him. Mehtab Singh fired a shot towards Sant Hakam Singh, but Sant Hakam Singh bent down and the bullet passed over his head. Balance of the motorcycle went out of control. Sant Hakam Singh and driver fell down. Thereafter Sant Hakam Singh came to Dera and in the evening, he went to Civil Hospital to enquire about the complainant. The aforesaid statement was recorded on 11.03.2016 itself.

[5]. After finding *prima facie* case for the offences in question Sections 307, 323, 427, 341, 148, 149 IPC and Sections 25/54/59 of the Arms Act, the police registered the case.

[6]. After completion of investigation offences under Section 307 IPC and Section 25/54/59 of the Arms Act were not found to be involved against the accused persons. Accordingly, offences under Section 307 IPC and 25/54/59 of the Arms Act were dropped. Challan was filed against the accused persons under Sections 341, 323, 427, 148, 149 IPC. The case was fixed for consideration of charges.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[7]. Assistant Public Prosecutor filed an application for commitment of challan for the offence under Section 307 IPC on the ground that initially the case was registered under Section 307 IPC and Section 25/54/59 of the Arms Act, but during investigation the offence under Section 307 IPC and Section 25/54/59 of the Arms Act were deleted. The complainant pleaded that the accused party inflicted injuries upon the complainant and also fired upon Sant Hakam Singh with an intention to kill them. After the said occurrence was over, when Sant Hakam Singh was going to Dera on the motorcycle being driven by Raghvir Singh, he was fired upon near the cremation ground by Mehtab Singh Ex. Sarpanch and others where they were already standing. Mehtab Singh fired 4-5 rounds of shots towards Sant Hakam Singh, but he saved himself. The version of Sant Hakam Singh was duly testified by SP (Investigation) Sangrur in his report dated 08.04.2016. The said inquiry was got conducted by the SP (Investigation) Sangrur at the instance of accused party itself.

[8]. On coming to know about the aforesaid report dated 08.04.2016, the accused claimed that the aforesaid report was illegally prepared by the SP (Investigation) under the influence of political leader against the accused party. It was also claimed that the said report was never made part of the challan and at

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

the time of framing of charges by the trial Court, the said report cannot be considered for framing of charges for or commitment of the case to the Court of Sessions.

[9]. On application moved by the petitioner-Mehtab Singh for enquiry, the case was entrusted to the SP (Investigation). As per report of the SP (Investigation), the accused were found liable for the offences under Sections 307, 323, 341, 427, 148, 149 IPC and Sections 25/54/59 of the Arms Act vide report dated 08.04.2016. The challan was presented on 13.08.2016. Even after aforesaid enquiry report conducted by the SP (Investigation), the Incharge of concerned Police Station did not notice the aforesaid inquiry report and dropped the offences under Section 307 IPC and Section 25 of the Arms Act without application of mind.

[10]. The trial Court vide order dated 15.11.2017 took notice of the aforesaid facts and after considering the material on record and the intention of the accused party, committed the case to the Court of Sessions for the offences under Sections 307, 323, 341, 427, 148, 149 IPC and Section 25/54/59 of the Arms Act as offence under Section 307 IPC is exclusively triable by the Court of Sessions.

[11]. Petitioners remained unsuccessful before the revisional

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

Court when the revision petition was dismissed by the Addl. Sessions Judge, Sangrur vide order dated 15.01.2018. Vide order of even date i.e. 15.01.2018 charges against the petitioners were also framed. That is how the present petition came to be filed before this Court.

[12]. Learned counsel for the petitioners vehemently submitted that powers under Section 190 Cr.P.C., cannot be utilized at the stage when the case was fixed for charges before it. The complainant received four injuries and all the injuries were found to be simple in nature. The story of gun shot fire was disbelieved by the Police, when no challan was submitted for the offences under Section 307 IPC and under Section 25 of the Arms Act. Report dated 08.04.2016 prepared by the SP (Investigation) Sangrur was not the part of challan. Even though the same was prepared at the instance of petitioners, when they moved application before the Police.

[13]. Learned counsel further submitted that instead of considering material for framing the charge, learned trial Court acted illegally on the basis of material which was not part of the challan and proceeded to commit the case to the Court of Sessions even in the absence of any sanction obtained by it for the offence under Section 25 of the Arms Act.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[14]. Learned State counsel opposed the prayer made by the petitioners on the ground that examination-in-chief of the complainant and eyewitness have already been conducted and the case was fixed for cross-examination of the aforesaid witnesses on 21.03.2018.

[15]. Learned State counsel further submitted that for the offence under Section 307 IPC intention of the accused is to be seen, even though no gun shot injury is received by the complainant. Since the accused party opened fire on Sant Hakam Singh, when he was going on motorcycle with Raghbir Singh, therefore, at the present stage only *prima facie* case is to be seen.

[16]. Learned State counsel by relying upon unfettered powers of the trial Court in terms of Section 190 Cr.P.C. contended that the Court takes cognizance of the offence when it applies its mind. The Court takes cognizance of any offence on receiving a complaint of facts which constitute such offence, upon a police report of such facts and upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Cumulative effect of the aforesaid would give the Magistrate ample powers to take cognizance of the offence on the basis of material placed before him.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[17]. I have considered the submissions made by learned counsel for the parties and have perused the material on record.

[18]. It is a settled principle of law that a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code of Criminal Procedure (for short 'the Code'), even though the police report is to the effect that no case is made out against the accused. The Court takes cognizance of the offence at the time when the Court applies its judicial mind and takes judicial notice of the offence with a view to initiate the proceedings in respect of such an offence which appears to have been committed. At the time of taking cognizance of the offence, the Court has to see only whether *prima facie* there are reasons for issuing the process and whether the ingredients of the offence are available on record. If the Magistrate takes cognizance of the offence by passing an order, the correctness of such order should not be interfered with in routine unless, the order is found to be perverse and based on no material. Such an interference should be sparingly made. The Police report is always under scrutiny of the Magistrate and the Magistrate is entitled to take cognizance of the offence under Section 190(1) (b) of the Code, even if the said police report is to the contrary. The Magistrate can take cognizance of the offence only on the basis of police investigation.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

[19]. In ***Messrs India Carat Pvt. Ltd., vs. State of Karnataka, 1989(1) R.C.R. (Criminal) 395***, the Hon'ble Apex Court held that the Magistrate on receipt of police report under Section 173(2) Cr.P.C. is entitled to take cognizance of the offence under Section 190(1)(b) of the Code, even if the report is to the effect that no case is made out against the accused. The Magistrate can take into consideration the statements of witnesses examined by the Police during investigation and take cognizance of the offence complained of and order issue of process to the accused. Section 190(1)(b) of the Code does not lay down that a Magistrate is bound to take cognizance as per report of the investigation. Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the material emerging from the investigation and take cognizance accordingly, if he thinks fit, in exercise of his powers under Section 190(1)(b) of the Code and direct the issue of process to the accused. The aforesaid principle as laid down in Messrs India Carat Pvt. Ltd.'s case (supra) was followed by the Hon'ble Apex Court in ***Dr. Mrs. Nupur Talwar vs. C.B.I. Delhi and another, 2012(4) R.C.R. (Criminal) 326***.

[20]. The expression cognizance has not been defined in the Code. It means that 'become aware of' and when used with reference to an court or a judge, it connotes 'to take notice of

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commission of criminal proceedings. It is taking of cognizance of an offence and not of an offender.

[21]. At the time of committal or framing of charges, the Magistrate can take cognizance of offences on the basis of material on record. Magistrate has to be satisfied whether, there is sufficient ground for proceeding or not. In ***Jagdish Ram vs. State of Rajasthan and Anr., 2004(2) R.C.R. (Criminal) 194***, the Hon'ble Apex Court while relying upon ratio of ***Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal, 2003(2) R.C.R. (Crl.) 110 (SC)*** held that at the stage of taking cognizance and reaching a *prima facie* view the entire material collected by the police can be seen. In a complaint case, the Magistrate while taking cognizance is entitled to see the statement of the witnesses recorded by the Magistrate under Sections 200 and 202 Cr.P.C. while coming to *prima facie* conclusion that sufficient grounds exists for further proceedings in the matter. The Hon'ble Apex Court further held that notwithstanding the opinion of the police, the Magistrate is empowered to take cognizance, if material available on record

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

makes out a case for issue of process against the accused. The investigation is the exclusive domain of the Police. Taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At that stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding or not? Adequacy of the evidence for ultimate conclusion or otherwise would be gone into by the trial Court at the time of trial or at the time of inquiry. At the time of issuing process to the accused, meticulous examination of the material is not supposed to be done. The Magistrate is not required to record reasons. Taking of cognizance by the Magistrate does not call for any interference in exercise of inherent powers of the High Court under Section 482 Cr.P.C., unless and until the order is found to be perverse and has been passed without any material on record.

[22]. In the instant case, the inquiry was held by the SP (Investigation) at the instance of petitioners' side, when they filed application before the Higher police officers for conducting fair inquiry/investigation. It was only on their application, SP (Investigation) conducted the inquiry and came to the conclusion that the offences under Section 307 IPC and Section 25 of the Arms Act were attracted. The said report was made available on 08.04.2016 before filing of challan on 13.08.2016.

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

The Incharge of the concerned Police Station ignored the aforesaid fact finding inquiry. The Magistrate is empowered to take notice of the entire material at the time of taking cognizance. Since the Magistrate takes cognizance at the time of framing of charges, therefore, when the case was fixed for framing of charges before the Magistrate, the Magistrate appreciated the material on record and found that the case to be worth committal before the Court of Sessions as the offences under Section 307 IPC and Section 25 of the Arms Act were found to have been committed.

[23]. It is a settled principle of law that the Court can alter charge during trial at any stage in terms of Section 216 Cr.P.C. The Court is empowered to take notice of all the material to be brought on record by the parties and can alter the charge. The only requirement is that on alteration of charge the accused has to be given right of audience and full opportunity to defend himself. Provisions in terms of Sections 216 and 217 Cr.P.C., are mandatory in nature and also guarantee an important right which is given to the accused to defend himself properly by means of full opportunity. It is obligatory on the part of Court that no prejudice is caused to the accused and he is allowed to have a fair trial.

[24]. In the present case, the statement of Sant Hakam

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

Singh was recorded by the Police under Section 161 Cr.P.C on the same day and the factum of opened firing by the accused/petitioners came to fore. The ingredients of offences under Section 307 IPC and Section 25 of the Arms Act were duly found by the police at the first instance, when the FIR was registered for the said offences and again in the report of the Higher Officer, when such an offence was found to have been committed on *prima facie* note. At the stage of committal or framing of charge, the Court is not to undertake availability of sufficient material on record so as to draw reasonable prospects of ultimate conviction, but at this stage only *prima facie* view of the matter to proceed with the case is to be seen and in my considered view, the order passed by the trial Court in committing the case to the Court of Sessions on finding *prima facie* material for the offences under Section 307 IPC and Section 25 of the Arms Act cannot be held to be perverse or having suffered with any illegality. The arguments raised by learned counsel for the petitioners would be appreciated by the trial Court at the relevant stage. These grounds are not enough to impede the correctness and validity of the cognizance taken by the Magistrate at the time when the case was fixed for consideration of charges before it.

[25]. The order of committal passed by the Magistrate, the

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document

order of revisional Court and ultimate framing of charges by the Court of Sessions for the offences in question cannot be interfered in exercise of powers under Section 482 Cr.P.C., as such powers are to be exercised sparingly and not under the garb of second revision petition. Having failed before the revisional Court, the petitioners cannot be permitted to rake up the issue under Section 482 Cr.P.C. on the same grounds.

[26]. In view of above, I do not see any illegality and perversity in the impugned orders passed by the Courts below. This petition is accordingly dismissed.

[27]. Nothing expressed hereinabove would be considered to be an opinion on merits of this case in any manner. The aforesaid facts were noted only for the sake of disposal of the present petition.

March 27, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

Mohmed Atik
2018.03.31 17:24
I attest to the accuracy and
authenticity of this document