

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6244-2015
Date of decision: 26.03.2018

Santosh Kumari and others

... Petitioners

Vs.

Anil Patial

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Jaswal, Advocate
for the petitioners.

Mr. Rohiteshwar Singh, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 09.12.2014 passed by the Additional Sessions Judge (Adhoc) Fast Track Court framing charges against the petitioners under Sections 452/323 of the Indian Penal Code (for short 'IPC') in criminal complaint No.22 dated 13.12.2009 under Sections 323, 452, 427, 341, 148, 149, 504, 506, 120-B IPC, vide which the revision petition filed by the respondent was partly allowed.

Brief facts of the case are that the respondent-complainant filed the complaint with the allegations that on 13.12.2009, he was raising construction over his property and the accused persons unauthorizedly entered in the courtyard and stopped the construction. The accused persons were armed with stones, broken bricks, lathies and iron rods etc. and accused Tarsem Lal and

Santosh Kumari raised a voice and instigated their co-accused to teach a lesson to him and their family members for raising construction and they attacked on the complainant, who ran away and took shelter in his house. The other accused persons started demolishing the foundation of the kitchen and pillars and by throwing the stones etc., they had broken other articles at the spot, including a scooter of the complainant.

The complainant recorded his pre-charge evidence and thereafter, the accused persons were summoned to face the trial under Sections 323, 452, 427, 148, 149 IPC vide order dated 08.03.2010. Thereafter, no fresh pre-charge evidence was led and the trial Court, vide order dated 05.02.2014, framed charges against the petitioners under Sections 341/427/148/149 IPC. The respondent-complainant filed a revision petition before the revisional Court/Fast Track Court, which was partly allowed and the order dated 05.02.2014 framing charges against the petitioners-accused was modified and charges under Sections 452/323 IPC were also framed, in addition to the charges under Sections 341/427/148/149 IPC already framed by the trial Court.

The present petition has been filed challenging the order dated 09.12.2014 passed by the revisional Court, vide which the charges under Sections 452/323 IPC were also added.

Learned counsel for the petitioners has argued that the revisional Court has exceeded its jurisdiction in framing the charges under Sections 452/323 IPC and even if the Court comes to a conclusion that the trial Court has not properly framed charges, it should have remanded the case back to the trial Court for passing the fresh order. Counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **State of Maharashtra Vs. Salman**

Salim Khan and another, 2004 (1) RCR (Criminal) 314, wherein the Hon'ble Supreme Court has held that the High Court should not express its view regarding the order of Sessions Court with regard to discussing evidence for framing of charge and it should have been left open to be decided by the Court trying the offence, to alter or modify charge at an appropriate stage, based on material produced by way of evidence.

In reply, learned counsel for the respondent has referred to the summoning order dated 08.03.2010, vide which the petitioners were summoned to face the trial under Sections 323/452/427/148/149 IPC. Learned counsel for the complainant has submitted that on the basis of evidence led by the complainant in the preliminary evidence i.e. CW1 Anil Patial, CW2 Darshna Kumari, CW3 Ajay Kumar and CW4 Parshotam Singh Kalsi and the documents available on record, a prima facie case was made out against the accused persons.

Learned counsel for the respondent-complainant has further argued that at the pre-charge evidence, the complainant has led the same evidence and therefore, there was no variation in the evidence led by the complainant and the trial Court erroneously did not frame charges under Sections 452/323 IPC and the impugned order passed by the trial Court amounts to dropping of charges under the aforesaid Sections.

Learned counsel for the respondent has further submitted that the petitioners have availed their remedy of challenging the summoning order dated 08.03.2010 by way of filing a revision petition before the Court of Sessions and the same was dismissed vide order dated 04.05.2010 upholding summoning of the petitioners under Sections 323/452/427/148/149 IPC and therefore, the

revisional Court, on appreciation of the same evidence, which was led as preliminary evidence as well as pre-charge evidence, has rightly modified the order dated 05.02.2014, thereby directing that charges under Sections 452/323 IPC be also framed against the petitioners.

Learned counsel for the respondent has also submitted that facts of the case in **Salman Salim Khan**'s case (supra) are distinguishable from the facts of the present case, as in the said case, charge was framed under Section 304-A IPC and later on, chargesheet was filed under Section 304 Part II IPC on basis of the additional statement of the complainant. When the charge was framed under Section 304 Part II IPC, the accused filed a petition under Section 482 Cr.P.C. before the High Court of Judicature at Bombay and while allowing the said petition, the High Court quashed the order of the Sessions Court framing charge under Section 304 Part II IPC and directed the Magistrate's Court to frame de-novo charges under various Sections mentioned in the said order, including one under Section 304-A IPC.

The Hon'ble Supreme Court in **Salman Salim Khan**'s case (supra) has held that the High Court was not justified in giving a finding as to non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC. It was further held that it was premature to record a finding at the stage of framing of charge.

In the present case, it is not disputed that the complainant has led the same evidence at the pre-summoning stage as well as at the pre-charge stage and therefore, the trial Court, while not framing the charges under Sections 452/323 IPC, has not recorded any reason and the revisional Court, on the basis of evidence, which is available on record, has held that the trial Court has

committed a mistake and accordingly, has modified the order framing of charge under the aforesaid Sections. It was also observed by the revisional Court that the trial Court cannot take two different views on the basis of same set of evidence, while passing the summoning order and framing of charge, as the evidence on both the occasions was the same.

In view of the above, I find no merit in the present petition and the same is dismissed.

Since the proceedings before the trial Court were stayed vide order dated 06.04.2015, the trial Court is directed to expeditiously decide the complaint within a period of one year.

[ARVIND SINGH SANGWAN]
JUDGE

26.03.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No