

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 105 of 2015 (O&M)
Date of Decision: 10.10.2018**

Kirpal Singh others

.....Petitioners

Versus

Manjit Kaur @ Subhadara and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Mohit Jaggi, Advocate
for the petitioners.

Mr. Tapish Gupta, Advocate
for respondent No. 1.

Ms. Jaspreet Kaur, AAG, Punjab.

ANITA CHAUDHRY, J

This revision has been directed against the order dated 15.12.2014 passed by the Additional Sessions Judge who had accepted the appeal filed by the complainant and had set aside the order passed by the trial Court.

A complaint was filed by Manjit Kaur wherein she had alleged that on 4.5.2007 she was milching the buffaloes when the accused came to her house armed with *lathis* and *lalkara* was raised and the accused rained *lathi* blows and she received multiple injuries. The allegations were that Kirpal Singh tore her clothes. The complainant raised alarm and Gurtej Singh son of the complainant along with some neighbours came to the spot and the accused persons ran away. The family members of the complainant admitted the complainant in Rajindra Hospital. It was alleged that the police

came and recorded their statements. The allegations further were that on 5.5.2007, her son came to their house for milching the cattle at 5.30 A.M. where he was attacked by accused who were armed with *lathis* and kirpans caused grievous injuries to him and forcibly dispossessed them from the house. It was alleged that they were not allowed to enter their own house. With the help of the police they entered their house on 8.5.2007 and it was found that their buffaloes, calves, gas cylinder, T.V. and other household articles are missing. The complainant made enquiries and she was told by Paramjit Singh son of Sukhdev Singh that the articles had been stolen by the accused. It was alleged that a sum of Rs. 63,000/- had also been taken away from the iron box. It was also alleged that the occurrence was witnessed by Paramjit Singh.

The trial Court summoned the accused. Pre-charge evidence was recorded. After hearing both the sides, the trial Court discharged the accused as it found that it was not a fit case to frame charge.

Against that order, the complainant filed an appeal. The first Appellate Court set aside the order of the trial Court and the observations made by it are contained in para 15 which read as under:-

“After giving my careful consideration, I am of the considered view that as per the version of the complainant, the occurrence took place on 4.5.2007 and complainant has duly placed on record, copy of the MLR and she has examined Parneet Kaur as CW2 who is eye witness, CW3 Swaranjit Singh who is also deposing about the incident. CW4 Veena Rani, Senior Assistant, CRA Office, Rajinder Hospital, Patiala, who brought the summoned record of hospital from where the complainant has discharged on 5.5.2007. Law is well settled in citation “Sheoraj Singh Ahlaat and Ors. Vs. State of Uttar Pradesh and Anr. 2013 (1) Criminal Court Cases 503 (S.C.)”.

in which ,it is held that discharge at the stage of framing of charge-At this stage Court is required to consider whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out- Even strong suspicion founded on material would justify the framing of charge. So, in my view and by relying upon the citation, charge can be framed even on strong suspicion and at the stage of framing charges probative value of the material on record cannot be gone into. The material brought on record by the prosecution has to be accepted as true at this stage. If the Court finds prima facie evidence, sufficient to proceed further then the Court is not required to appreciate evidence. So, in my view there is sufficient evidence on record to proceed further, but the learned Trial Court has wrongly discharged the accused at this stage.”

The Additional Sessions Judge in its impugned order had observed that at the time of framing of charge only a strong suspicion has to be seen and the probative value of the material on record cannot be gone into and the material brought on record by the prosecution was enough to frame the charge and the order was set aside and the trial Court was directed to proceed as per law.

It is against that order the accused have filed this revision.

I have heard both the sides.

Counsel for the petitioners submits that the trial Court had minutely gone through the evidence as it was a complaint case and the parties have been afforded an opportunity of cross-examination and they had presented their defence and had proved on record that in the incident which was alleged to be of 5.5.2007 one of the accused was admitted in the hospital. The counsel further submits that the complainant had pleaded that the incident was witnessed by Paramjit Singh but he was not examined and

therefore the trial Court considered it a fit case for discharge. The counsel further contends that an FIR had been lodged against the complainant's family relating to an incident which occurred on 5.5.2007 at 8.30 A.M. and challan was presented and the accused were convicted and therefore story set-up by the complainant gets falsified but the first Appellate Court did not consider all that evidence and gave a wrong finding that only *prima facie* case was to be seen. The counsel also urges that it was not an FIR case but a complaint case where the complainant had led her entire evidence. The counsel further submits that Gurtej Singh, Gurwinder Kaur daughter of Joginder Singh and wife of Gurtej Singh namely Preet Kaur had been challaned as they inflicted injuries upon them in the incident which occurred on 5.5.2007 at 8/8.30 A.M. and they were convicted on 6.10.2010 and the copy of the judgment is available on record. The counsel also submits that the complaint had been filed after a delay and it was a counter-blast to the FIR and the order passed by the first Appellate Court has to be set aside.

On the other hand the submission on behalf of respondent No. 1 is that it is for the trial Court to see whether any charge has to be framed and the Court has examined the evidence as if it was finally deciding the matter.

It is not disputed that an FIR had been registered against the son and daughter of complainant Manjit Kaur relating to an occurrence which took place on 5.5.2007. The challan was presented and the trial had ended in their conviction. A complaint was subsequently filed in September 2007. The complainant had examined herself and one of her family member. No independent witness was examined though the allegations levelled by the complainant were that the articles were taken away by the accused in the presence of Paramjit Singh. The complainant was not a witness to that

occurrence. No complaint was given to the police. The complainant did claim that both the parties were challaned under Section 107, 151 Cr.P.C. on 11.5.2007. The complainant had alleged that *kalandra* was based on concocted facts and not according to the pleas given by her.

The police did not register any FIR on the statement of the complainant. On the contrary, an FIR had been registered against her son and family members for causing injuries to Mandeep Singh. The MLR is available on record. Statement of Dr. Amandeep Kaur PW-5, who had examined Mandeep Singh on 5.5.2007, is also available. Mandeep Singh had received serious injuries. He was admitted in the hospital when the second incident has been alleged. The trial Court had very minutely examined the evidence and found the evidence of the complainant to be shaky, full of contradictions and doubtful and rightly so. The complainant had alleged that the accused had come to their house on 5.5.2007 but the hospital record showed that he was admitted in the hospital at 10.00 A.M. on the same day. The facts which were presented were found to be false. The story was considered to be concocted and the accused were rightly discharged. The first Appellate Court took a wrong view that only the allegations were to be considered at that stage.

The revision is allowed. The order passed by the first Appellate Court is set aside.

(ANITA CHAUDHRY)
JUDGE

October 10, 2018
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No