

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

CRR-2554-2016(O&M)

Date of decision:- 3.5.2018

Subhash Singh Mittal alias Subhash Chand Mittal

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.B.S. Rana, Sr.Advocate with
Ms.Pooja Bansal, Advocate for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.R.S. Bains, Advocate
for the complainant.

H.S. MADAAN, J.

This revision petition is directed against order dated 25.3.2016 vide which learned Additional Sessions Judge – I, Fatehabad declined to discharge the petitioner in case FIR No.28 dated 11.10.2010, under Sections 302, 307, 323, 148, 149, 120-B, 201 IPC and 25/27 of Arms Act, registered at Police Station Sadar, Budhlada.

Briefly stated, facts of the case as per prosecution story are that criminal machinery in this case was set into motion by complainant Mahender Singh son of Bhajan Singh, General Secretary of Bharti Kisan

Union (Ekta) of District Mansa, who in his statement made to the police on 11.10.2010 stated that on that very day members of Kisan Union gathered at village Biroke Khurd to oppose the auction of land of Bhola Singh in execution of the money decree passed in favour of Ram Kishan of Budhlada Mandi against Bhola Singh; that the members of Kisan Union assembled in front of Dharamshala of village Biroke Khurd and organized a rally of farmers to oppose the auction of land; at about 2:00 p.m., Halqa Patwari and Kanungo reached the spot and adjourned the auction of the land of Bhola Singh as no person came forward to bid in the auction, as such, a number of farmers left the rally spot; the complainant along with Pirthi Singh, Lachhman Singh, Tarsem Singh, Kulwant Singh, Bhola Singh, Gora Singh and 10-15 other persons of Kisan Union remained present there for collecting the articles lying on the stage; at about 2:30 p.m., three vehicles including a Gypsy reached there; Naib Tehsildar Subhash Mittal (present petitioner), commission agent Ram Kishan, Vijay Kumar, Parveen Kumar, Satipal @ Maghi, Jashandeep @ Jassi and Jeet Singh along with 4-5 other persons alighted from the vehicles and talked about auctioning the land of Bhola Singh; the farmers who were present there started raising slogans; Ram Kishan and Vijay Kumar raised a *lalkara* that a lesson be taught to those persons for opposing the auction proceedings; Jeeta Singh fired from his pistol and the bullet hit Pirthi Singh, who was raising slogans, in his chest; Pirthi Singh fell down; thereafter, Ram Kishan exhorted Jassi @ Jashandeep, Parveen and Satipal @ Maghi that nobody should be spared, therefore, Jassi @ Jashandeep Singh fired a shot from his revolver towards Tarsem

Singh son of Bhura Singh, who got a little bit aside and the bullet hit Tarsem Singh on his left toe through footwear, then Parveen and Satipal @ Maghi fired shots from their revolvers/pistols towards Lachhman Singh, who fell down and suffered injury on his left arm. It is further contended that unidentified persons gave fist blows to the workers of Bharti Kisan Union and when such workers raised alarm, then all the assailants ran away therefrom along with their respective weapons. Injured were taken to Civil Hospital, Mansa, where they were got admitted and medico legally examined. According to the complainant, the incident occurred due to pre-planned conspiracy of Subhash Mittal, Naib Tehsildar, Budhlada. After the registration of the FIR, the case was investigated. The police had not sent the petitioner to face trial, rather his name was placed in column No.2 of the challan. However, during the trial of the case, an application under Section 319 Cr.P.C. was filed, which was allowed and the petitioner was ordered to be summoned as additional accused. He had challenged the summoning order in this Court by filing a petition under Section 482 Cr.P.C. but the same was dismissed vide order dated 2.7.2013. He had preferred a Special Leave to Appeal challenging that order. However, that also met the same fate and was dismissed by the Apex Court observing that there is no merit in the application. The petitioner then moved an application under Section 197 Cr.P.C. in the trial Court for discharge for the reason that requisite sanction for his prosecution had not been obtained, which was dismissed by the trial Court vide a detailed order dated 25.3.2016 observing as under:

Statement of complainant Mahender Singh which formed the

basis of the First Information Report reveals that members of Bhartiya Kisan Union gathered on 11.10.2010 at 2:00 PM to protest against the auction of land of Bhola Singh in execution proceedings. It is alleged that at about 2:00 PM, Halqa Patwari and Halqa Kanungo reached and adjourned the auction of land as none appeared to bid, upon which, the rally ended and a number of farmers left the spot. It is alleged that subsequently, at about 2:30 PM, Naib Tehsildar Subhash Mittal along with commission agent Ram Kishan and other accused came in two cars and a Gypsy and talked about auction of the land of Bhola Singh, whereupon, the co-accused took out pistols and fired shots. It is alleged that the occurrence took place due to pre-planned conspiracy of Subhash Mittal, Naib Tehsildar.

There is evidence on record that the applicant, being the Naib Tehsildar, was deputed to execute the order of the civil court. The auction having been adjourned in the first instance; none appearing to bid, leading to end of the rally, it cannot be accepted that Naib Tehsildar Subhash Mittal reached the spot again at about 2:30 PM to execute civil court orders. Since none appeared to bid, the crowd having dispersed, there was hardly any occasion for the Naib Tehsildar to conduct the auction proceedings again. Therefore, the court cannot hold that the applicant was performing a duty in his capacity as Naib Tehsildar when he

reached the spot. Further, since it is alleged that the Naib Tehsildar reached the spot along with commission agent Ram Kishan, Vijay Kumar, Parveen Kumar, Satipal alias Maghi, Jeet Singh, Jassi @ Jashandeep Singh and 4/5 others persons in three vehicles, it cannot be said that he was acting in his official capacity when the alleged offence was committed or was performing a duty in his capacity as Naib Tehsildar, which led to the offences complained of. The role attributed to the applicant is that of a conspirator, it cannot be held that it was a part of his duty to conspire with private persons, six in number, to commit the murder. Since the conspiracy with private persons is totally unconnected with official duty, there can be no protection and the applicant/accused cannot be permitted to take the shelter of Section 197 Cr.P.C. even though he may have reached the spot in his capacity as Naib Tehsildar. His participation with the co-accused, who are private persons, takes the case out of the purview of Section 197 Cr.P.C. and no prior sanction of the State Government would be required for proceeding against the applicant.

Learned counsel for the applicant has referred to statement of PW4 Sukhwinder Singh, Patwari Halqa and the copy of roznamcha waquati Ex.P6 in support of his argument that the applicant, Naib Tehsildar, reached the spot at about 3:00 PM. In this context, suffice to observe that the evidence of PW4 Sukhwinder Singh, Patwari Halqa, cannot be read in

isolation to give benefit to the applicant and the entire evidence has to be appreciated in holistic manner to arrive at just and proper conclusion. Only four witnesses have been recorded in the trial against the applicant and prosecution is yet to examine main witnesses. It would, therefore, not be appropriate to record any finding on the solitary evidence of PW4 Sukhwinder Singh, Patwari Halqa, who is completely silent about the incident at spot. The one sided rapat no.66 on record as Ex.P6 cannot be used, at this stage of the case, to give an advantage to the applicant.

Even though the law permits a public servant to produce relevant documents without formal proof in support of his plea under Section 197 Cr.P.C., the copy of mortgage deed dated 11.10.2010 cannot be looked into as it does not support the plea under Section 197 Cr.P.C. Rather, the applicant relies upon the document to prove before the court that he was not even present at the time of the incident. The copy of mortgage deed, therefore, has to be excluded from consideration, at this stage of the case.

Since charges have already been framed vide order dated 04.06.2011, there is no ground to frame the charges afresh.

There is no merit in the application for framing the charges afresh and discharging the applicant under Section 197 Cr.P.C., the same stands declined.

The petitioner still felt aggrieved by the said order and has filed the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

Admittedly, the petitioner had challenged the order summoning him to face trial as an additional accused, which was dismissed by this Court and Special Leave to Appeal was also declined by the Apex Court. The petitioner should have taken all the pleas open to him including non-obtaining of sanction by the police/prosecuting agency under Section 197 Cr.P.C. but he did not do so. The litigant is required to take all the pleas available to him when approaching Court and not to do so in installments. If that is allowed then the litigant may file a petition taking some of the pleas and if unsuccessful may approach the Court again with a few other pleas, if unsuccessful then again taking some more pleas and so on, leading to multiplicity of litigation, which can certainly be not allowed. The act and conduct of the petitioner in going to the spot along with his co-accused and his co-accused opening fire resulting in death of Pirthi Singh goes to show that he was not there in his official capacity since as per the case of the prosecution, the auction had already been postponed by his Subordinate staff earlier in the day. It being so, he

has no business of going to the spot. His visit to the spot does not appear to have any nexus with his official duties, which might have required obtaining sanction under Section 197 Cr.P.C. for his prosecution. The trial Court vide a detailed well reasoned order has come to this conclusion and I do not find any reason to disagree with the same.

Learned Senior counsel for the petitioner has referred to authorities i.e. *K.Kalimuthu Versus State by D.S.P., 2005(2) R.C.R.(Criminal) 463, Suresh Kumar Bhikamchand Jain Versus Pandey Ajay Bhushan, 1998(1) R.C.R.(Criminal) 165 and Gian Parkash Versus State of Haryana, 2008(3) R.C.R.(Criminal) 31* but those do not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

It may be mentioned here that co-accused of the petitioner have faced trial by Additional Sessions Judge-I, Fatehabad and vide judgment dated 24.2.2015, his co-accused namely, Ram Kishan, Vijay Kumar, Shanti Pal @ Maghi, Jeet Singh @ Ranjit, Jashandeep Singh @ Jassi and Parveen Kumar have been convicted for offences under Sections 120-B, 148, 302, 307 & 201 IPC read with Section 149 IPC. In addition to that Ram Kishan and Vijay Kumar have been convicted and sentenced for offence under Section 27 of the Arms Act. Since proceedings against the present petitioner had been stayed as per order passed by this Court, therefore, trial against him could not take place. A perusal of the judgment vide which co-accused of the present petitioner had been convicted and sentenced, goes to show that in para No.34 of the judgment, it has been

observed as follows:

In the case titled **Hare Krishna Singh and others Vs. State of Bihar 1988 Supreme Court (Cri) 279,** it has been held that *though the burden of proving the guilt of the accused beyond all reasonable doubt is on the prosecution, it is not the law or invariable rule that whenever the accused sustains an injury in the same occurrence, the prosecution has to explain the injuries failure of which will mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.* In the instant case also, it is a definite case of the prosecution that on that day, the complainant party was protesting the auction proceedings and at about 1:00 PM, they were told by Halqa Patwari that auction proceedings have been postponed. This fact is further corroborated by the report Ex.P6 in which it has been averred by Sukhwinder Singh, Halqa Patwari that on 11.10.2010, as per the orders of Naib Tehsildar, Budhlada, he alongwith Kanungo and Naib Tehsildar, Bareta came to the spot to auction the attached property, however, there is an apprehension of quarrel between both the parties, so auction

could not be conducted. So a report was sent to Naib Tehsildar with a request for further proceedings. A perusal of statement of PW4 Sukhwinder Singh, Halqa Patwari, reveals that they reached village Biroke Khurd at about 1:30 PM. Kanungo Jagrup Singh prepared attendance sheet of the person present there. Kanungo Jagrup Singh left the spot and at about 3:00 PM, Naib Tehsildar Subhash, In-charge, Budhlada reached there. Thereafter, the people started shouting slogans and they came back. Meaning thereby in the presence of Patwari Halqa PW4 Sukhwinder Singh, no incident took place and he left the spot without holding the auction. Subhash Mittal, Naib Tehsildar came afterward at about 3:00 PM.

Similarly, paragraphs 35 to 37 are quite relevant and are being reproduced for the purpose of better understanding of the facts and circumstances of the case:

From the evidence of PW4 Sukhwinder Singh, it is clear that after preparation of daily diary report Ex.P6, the auction proceedings could not be conducted. As per the complainant's version, they were in the process of winding up the articles belonging to them when Subhash Mittal along with other accused came on the spot at about 3:00 PM. On the arrival of Subhash Mittal, the complainant party started raising slogans. Subhash Mittal, Ram Kishan and Vijay Kumar exhorted to teach a lesson for opposing the auction

proceedings. Jeeta Singh gave a fire through his pistol hitting in the chest of farmer Pirthi Singh who was raising slogans. Pirthi Singh fell on the ground.

At this stage, it is pertinent to mention here that the complainant party was not taking the law in their hands as it is the fundamental right of every citizen to protest in a peaceful manner. It is not the case of any party that the members of Kisan Union were armed with firearms, rather they had only sticks and lathies. When the Patwari and Kanungo had already made their endorsement Ex.P6 showing the apprehension of quarrel and told that auction proceedings could not be conducted, the complainant party had no apprehension in their mind that there could be any auction. On the other hand, when the accused party came on the spot they found the complainant present there to protest the auction proceedings and the complainant party started raising slogans. There was no reason for the complainant party to open an attack on the accused as the purpose for which the complainant party had gathered had already been achieved as auction proceedings was already postponed. If the complainant party was raising slogans then the accused party has a safer course i.e. to take legal assistance e.g. to take the police help to conduct auction. No effort has been made by Subhash Mittal, Naib Tehsildar to report the matter to the police complaining that the complainant party was

obstructing him while conducting the auction proceedings. Most of the farmers had already left the site when the incident took place. No evidence has been by the accused that the accused Ram Kishan being the decree holder had taken permission from the Court to participate in the auction proceedings and to give a bid in the same. As discussed above, the accused Vijay Kumar and Ram Kishan had come on the spot armed with licensed revolvers which shows that the accused Ram Kishan etc. being the members of unlawful assembly had a common object to get the attached property of Bhola Singh to put at auction and in case any protest is made then to give firearm injury to the protesters. This was the reason why the accused Ram Kishan etc. had exhorted to teach a lesson to the protesters.

In this case, the role of Naib Tehsildar is not upto the mark as even after the incident he made report Ex.P28 in which he did not disclose how the incident started. Had the complainant party been aggressor, he could have made a report that when he came to village Biroke Khurd, the complainant party had obstructed him while conducting the auction proceedings and would have lodged FIR against the persons obstructing him while performing his official duty. In the report Ex.P28, Naib Tehsildar has mentioned that when auction proceedings were started, both the parties had a quarrel which took the shape of a fight. Keeping in view the

situation, he returned without auctioning the attached property. Thus this official who was the main instrument in the conduct of the auction, did not disclose what actually happened on that day.

Furthermore, during the trial the petitioner may be able to prove his defence by leading evidence but as the things stand, no ground for discharging the accused for want of sanction was made out.

Therefore, revision petition challenging that order cannot survive and is dismissed accordingly.

3.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No