

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

CRR-2908-2016

Date of decision:-7.9.2018

Deepa and others

...Petitioners

Versus

Kulwinder Kumar and another

...Respondents

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

Present: Mr.Parminder Singh, Advocate
for the petitioners.

Mr.Mohd.Yusuf, Advocate
for respondent No.1.

Mr.Dhruv Dayal, Sr.DAG, Punjab
for respondent No.2.

H.S. MADAAN, J.

This revision petition has been filed by petitioner Deepa, his father Lekh Raj and mother Mindho feeling aggrieved by framing of charge against them by the Court of learned Additional Sessions Judge, Jalandhar for the offences under Sections 452 and 323 306 IPC against accused Deepa and Mindho and under Section 306 against all the accused vide order dated 3.6.2016 in a complaint filed by Kulwinder Kumar against them.

Briefly stated, facts of the case as per the allegations in the

complaint are that complainant Kulwinder Kumar was married with Manjit Kaur daughter of Bawa Ram, resident of Waryana, Tehsil and District Jalandhar on 4.2.2001; that after the marriage both the spouses started residing together at Jalandhar and were blessed with two children; that Smt.Rattani Devi aged about 70 years, mother of the complainant had been residing with him; that accused Deepa has been running a mobile shop in front of house of the complainant and he had been teasing and harassing Manjit Kaur, wife of the complainant asking her to elope with him, after leaving the complainant and other family members; that Manjit Kaur tried her level best to persuade Deepa not to do so and to mend his ways but to no effect; that Manjit Kaur informed her husband, the complainant, in that regard, who along with respectables of the area tried to persuade accused Deepa not to indulge in such type of wrongful acts, but to no effect, rather Deepa started threatening Manjit Kaur that in case she did not agree to elope with him, then he would kill her husband and children, abduct her and would make her life miserable; that on 15.11.2006 while the complainant was suffering from fever, he was on leave and was present at house, then at about 10/11:00 a.m. Deepa along with his mother Mindho trespassed in the house of complainant and tried to abduct Manjit Kaur by use of force, when the complainant and his mother intervened, then Deepa and his mother Mindho attacked them and assaulted Manjit Kaur with the intention to outrage her modesty, however, it was only with the intervention of respectables that Deepa and Mindho left the house and Deepa threatened that he would not allow family of the complainant to live in peace; that on the same day in the evening when

complainant had gone out of his house, then Deepa along with his mother Mindho came to house of complainant and threatened Manjit Kaur with dire consequences; that on 15.11.2006 at about 9:00 a.m., Deepa, Lekh Raj and Mindho were found talking in their shop by Pritam Dass son of Sangu Ram and they were saying that circumstances be so created that Manjit Kaur should leave the house and go with Deepa or she would commit suicide; that Manjit Kaur could not tolerate such acts of Deepa and Mindho and she committed suicide by hanging herself from the girder of roof of a room in her house with her *dupatta*.

The police was informed by the complainant and he made various representations to the higher authorities for lodging FIR against the accused but to no effect. He had approached Punjab State Human Rights Commission at Chandigarh also. The Commission took cognizance and called for report from ADGP, Intelligence. ADGP, Intelligence investigated the matter and found accused Deepa, his mother Mindho and father Lekh Raj directly responsible for abetting suicide by Manjit Kaur deceased. Whereas Karam Singh son of Munshi Ram and police official from Police Station Divn. No.8, Jalandhar were held to be responsible for not lodging the FIR. But the FIR was not lodged by the police. As such private complaint was filed by the complainant.

After recording of preliminary evidence, the accused were summoned to face trial for offences under Sections 306, 354, 323, 452, 506, 366, 511, 120-B IPC vide order dated 18.11.2010 passed by Judicial Magistrate Ist Class, Jalandhar. The accused put in appearance. The complaint was committed to the Court of Sessions, from where it was

assigned to Additional Sessions Judge, Jalandhar, who framed formal charge for the offences under Sections 452 and 323 IPC against accused Deepa and Mindho and under Section 306 IPC against all the accused, to which, they pleaded not guilty and claimed trial.

Feeling aggrieved by such order of framing of charge, the accused have filed the instant 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 main thrust of arguments advanced by learned counsel for the revisionist has been that no pre-charge evidence was recorded by the Court of Additional Sessions Judge, Jalandhar and charge was straightway framed against the accused.

However, this contention is devoid of merit. Section 209 Cr.P.C. provides that when in a case instituted on a police report or otherwise (as in the present case relating to private complaint), the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit the case to such Court after complying with the necessary provisions.

Chapter XVIII of the Code of Criminal Procedure deals with trial before the Court of Sessions. There are various sections.

Section 225 dilating that the trial would be conducted by a Public Prosecutor.

Section 226 provides that When the accused appears or is brought

before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads

guilty of the offence charged or claims to be tried.

Section 229 deals with conviction on plea of guilty.

Section 230 deals with fixing date for prosecution evidence.

There is no provision for recording of pre-charge evidence in a Sessions trial case. Therefore, there was no necessity for recording of pre-charge evidence. There are clear and specific allegations against the accused, who are mentioned in the complaint by name. The Court of Sessions has framed formal charge against all the accused, which means that that it was not found to be a fit case for discharge of the accused; that means both objective and subjective satisfaction of the trial Court was there to frame formal charge.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Resultantly, the revision petition stands dismissed.

7.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No