

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

Criminal Revision No.4911 of 2015 (O&M)

Date of Decision : 04-12-2018

Kulwinder Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

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

Mr. V.G.Jauhar, Senior DAG, Punjab.

Mr. A.K.Garg, Advocate, for respondent Nos.2 and 3.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioners, who are accused before the trial court, have come up in this revision petition assailing the impugned order dated 03.11.2015, passed by the learned Addl. Sessions Judge, Sangrur, vide which the order of framing charge dated 18.11.2014 has been set aside.

The facts of the case lies in narrow compass. On 01.07.2014, complainant Amandeep Singh was working in his field. At about 3:00 p.m. Gurcharan Singh armed with revolver and Jeet Singh, Amritpal Singh, Kulwinder Singh and Baljinder Singh armed with sticks came there towards the tractor of complainant. They firstly started giving beatings to complainant's father Harnek Singh. At that time, complainant was plying the tractor. He stopped the tractor and forward to rescue his father. Then Amritpal Singh raised *lalkara* exhorting his associates not to spare complainant and his father. Then Gurcharan Singh fired with his revolver towards the complainant with an intention to kill him which hit inside his left thigh. As such, the complainant fell down. Then Gurcharan Singh gave a kick blow to him. Thereafter all the accused persons gave beatings to both complainant and his father with their respective weapons. The complainant

was medically treated in the hospital. He received total five injuries. Injury No.1 was due to fire arm weapon and remaining were caused with different weapons.

The report under Section 173 Cr.P.C. was submitted before the learned Area Magistrate, who after going through the material on record framed the charges under Sections 325, 323 read with Section 34 IPC vide order dated 18.11.2014.

The complainant assailed the said order of learned Magistrate by filing a revision petition which was allowed and the impugned order dated 18.11.2014 was set aside by the learned Addl. Sessions Judge, Sangrur vide judgment dated 03.11.2015 while observing in para No.6 as under:-

“Perusal of the summoned record reveal that complainant Amandeep Singh has alleged in his statement on the basis of which FIR was registered that accused Gurcharan Singh fired at him with his licenced revolver with an intention to kill him and the bullet hit his left thigh. Another bullet was fired, which passed by his side. He has also alleged that other accused, who were armed with sticks inflicted injuries upon his father Harnek Singh, Gurcharan Singh and Gurmail Singh. The x-ray report of complainant Amandeep Singh reveal that there is a radio opaque foreign body present in his left thigh. Two FSL reports contained in a sealed envelope are also attached in the mentioned record of the learned Lower Court. It seems that these reports have escaped the attentions of the learned Lower Court at the time of framing of charge. The report under Section 173 Cr.P.C. reveals that the licenced revolver and empty cartridges were sent to FSL, Mohali and the report was received in the trial Court on 29.05.2015 as is evident from the order. It is well settled that at the time of framing of charge, all the documents, statements of witnesses recorded during

investigation produced by the prosecution have to be perused to find what offence is made out for the purpose of framing of charge. The impugned order, in my opinion, is not legally sustainable.”

I have heard learned counsel for the parties and have gone through the record.

At the time of the framing of the charge even if there is strong suspicion against the accused, the Court should apply its judicial mind to the facts of the case to find out from evidence produced whether or not a prima facie case has been made out. If so, charge has to be framed; otherwise, the accused shall be discharged.

In the case in hand, learned revisional court has given sound reasoning to set aside the impugned order. All the petitioners came together and Gurcharan Singh fired a shot with intention to kill Amandeep Singh and the shot hit him on his left thigh. Learned revisional court has observed that material evidence has not been considered by the learned Magistrate and this is why the trial Magistrate is directed to pass a fresh order in the light of the discussion made by the revisional court.

To the mind of this court, the impugned order dated 18.11.2014 passed by the learned revisional court is based upon proper appreciation of material available on record; it does not suffer from any illegality, infirmity or irregularity and the same does not call for any interference and is hereby affirmed.

Therefore, the instant revision petition being devoid of any merit is hereby dismissed.

**(RAJ SHEKHAR ATTRI)
JUDGE**

04-12-2018
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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No

