

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

**CRR No.213 of 2017 (O&M)
Date of Decision: September 14, 2018**

Balwinder Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.B.S.Dhillon, Advocate
for the petitioner.

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

Mr.P.S.Brar, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Balwinder Singh against State of Punjab and other respondents, challenging the order dated 09.12.2016 passed by learned Addl. Sessions Judge, Bathinda, vide which charges under Section 304 IPC and Section 30 Arms Act have been framed against accused-respondents No.2 and 3.

Notice of motion was issued. Learned State counsel appeared. Learned counsel for respondents No.2 and 3 also appeared and contested the petition.

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

From the record, I find that challan in the present case has been presented under Section 304 IPC and Sections 25 and 30 of the Arms Act. Learned Addl. Sessions Judge, Bathinda vide order dated 09.12.2016, after perusing the file, framed the charges under Section 304 IPC and Section 30 of the Arms Act against the accused-respondents. Both the accused were charge-sheeted accordingly, to which they pleaded not guilty and claimed trial.

From the perusal of the record, I find that allegations against the main accused Bhupinder Singh is that he has fired from his .315 bore rifle which hit deceased Gaganpreet Singh, who died. Learned counsel for respondents No.2 and 3 argued that as per case of the prosecution itself, Gangandeep Singh has fired upon Bhupinder Singh after going into his house and then Bhupinder Singh fired shot to save himself, though not directly upon Gaganpreet Singh but which, after hitting the iron rod, hit the deceased.

It is settled law that at the time of framing of charge, learned trial court is to see prima facie case only. At this stage, the Court is not to look into the defence version of the accused nor the Court is supposed to weigh the evidence for the purpose of conviction. In the present case, the dispute is that charge should be framed under Section 302 IPC or under Section 304 IPC. As per settled law, the trial Court, at any stage of the case, can amend the charge. As the charges have already been framed under Section 304 IPC, therefore, against this order revision is not maintainable. The petitioner, at the most, can avail remedy by filing application before the trial Court for amendment of the charge after some evidence is produced

under Section 304 IPC. As already discussed, learned trial Court can amend the charge, at any stage, during the pendency of the trial.

Learned counsel for the petitioner as well as learned State counsel argued that charge should be framed under Section 302 IPC and if, after the evidence, learned trial Court finds that some lesser offence is made out, then trial Court, can convict the accused for lesser offence. Regarding this argument, I find that this contention can be argued before the trial Court while filing the application for amendment of charge.

In view of the above discussion, present petition stands dismissed being not maintainable with the liberty to the petitioner to file application before learned trial Court for amendment of charge, if so advised, after some evidence is produced and trial Court is directed to consider that application, if any, on merits, as per law.

September 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No