

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 31.05.2018

CRR no.763-2017 (O&M)

Charanjit Singh and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Preetinder Singh Ahluwalia, Advocate
for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

In this petition, the petitioners seek quashing of the charges framed against them by the learned trial court (Additional Sessions Judge, Gurgaon), vide the impugned order dated 06.01.2017, for the alleged commission of offences punishable under Sections 188, 290 and 308 of the IPC read with Section 34 thereof.

Mr. Ahluwalia, learned counsel for the petitioners, first points to the FIR, Annexure P-3, dated 25.07.2015, registered at Police Station DLF Phase I, alleging therein the commission of offences punishable under Sections 336, 290, 188, all read with Section 34 IPC (the FIR number being 0252).

Learned counsel contends that as a matter of fact since all the offences alleged in the FIR were those that were punishable with imprisonment of less than one year, in the report filed under Section 173 Cr.P.C., it was stated that an offence punishable under Section 308 of the IPC had been added to the FIR on 15.07.2016.

He submits that this addition is shown to have been made as per the *challan*, only because the limitation would otherwise have run out for the court to take cognizance of the offences originally alleged in the FIR, in terms of Sections 468 and 469 Cr.P.C.

Mr. Ahluwalia next cites a judgment of the Supreme Court in the case of **Muniappan and others v. State of Tamil Nadu**, AIR 2010 SC 3718, as regards the charge framed under Section 188 of the IPC; and as regard non-culpability of the petitioners for the commission of an offence punishable under Section 308 IPC, he has cited judgments of the Supreme Court in **Sushil Ansal v. State through CBI**, 2015(10) SCC 359 and **Association of Victims of Uphaar Tragedy v. Sushil Ansal and another** AIR 2017 (SC) 976, to submit that even where deaths unfortunately took place in premises that did not cater to safety measures by way of providing sufficient number of exits therefrom, no charge under Section 302 or 304 of the IPC was sustained, the conviction having been for the commission of an offence punishable under Section 304A IPC; and therefore, in the present case, no mishap having taken place at all, imputation of *mens rea* for the commission of an offence punishable under Section 308 IPC, is wholly unsustainable.

He also cites a judgment of the Calcutta High Court in **Dr. Mani Kumar Chhetri v. State of West Bengal**, 2017(3) Cal.L.T. 655.

Mr. Surender Singh, learned AAG, Haryana, very fairly does not oppose the quashing of the charge framed under Section 188 IPC, in

view of the judgment of the Supreme Court in **Muniappans'** case (supra), but submits that as regards charge framed under Section 308 IPC, the petitioner not having provided enough safeguards for escape from their premises, the charge under Section 308 IPC is fully sustainable, with of course evidence to be appraised by the trial court during the course of the trial. He submits that this Court would not interfere in the framing of the charge under the said provision.

He also cites judgments of the Supreme Court in **Durgacharan Naik and others v. State of Orissa** AIR 1966 (SC) 1775 and **Pankaj Agarwal and others v. State of Delhi and another**, 2001(5) JT 233.

(As regards the second judgment, he refers to it to submit that even if this Court holds that the charge framed under Section 188 is not sustainable, the trial would continue qua the remaining charges).

Having considered the arguments on both sides, I find myself eventually in agreement with the learned counsel for the petitioner, as regards the question of maintainability of charges for the commission of offences punishable under Sections 188 and 308 of the IPC.

In the present case, it is not disputed at all that (luckily) no untoward accident/occurrence took place by which anybody was injured etc., due to the petitioners not having provided adequate number of exits from their premises.

Though in the *prima facie* opinion of this Court, as had been conveyed on the previous date of hearing, knowledge could be imputed to

the petitioners that due to non-adherence to safety standards, even lives could be lost in case of an unfortunate fire etc., however, in view of what has been held in the Uphaar Tragedy case (supra), at best, even in the case of an unfortunate tragedy, an offence punishable under Section 304A of the IPC would be committed.

In that case, unfortunately, many lives had been lost, due to non-adherence to proper safety measures by the owners of the cinema hall.

Therefore, if an occurrence in which a large number of people have lost their lives in a cinema hall, was held to be an offence punishable under Section 304A and not Section 304 of the Penal Code, as regards an offence punishable under Section 308 IPC, in the present case, naturally where no such occurrence has taken place, in the opinion of this Court, an attempt to commit such an offence cannot be imputed to the owner of the premises where, similarly, safety standards have not been adhered to, (even if the owner had reason to believe that such tragedy could take place for non-adherence to such safety standards).

Thus, though in the opinion of this Court, in the case of a tragedy in such circumstances an offence under Section 304 may be made out, however, the conviction in the Uphaar case having been in respect of an offence punishable under Section 304-A and not Section 304, in the present case an offence punishable under Section 308 of the IPC cannot be made out.

Coming then to the charge framed under Section 188 of the IPC. In Muniappans' case (supra), where charges were framed for the commission of offences punishable under Sections 147, 148, 149, 436 and 302 of the IPC, as also under Section 188, it was held by the Supreme Court as follows:-

“27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 Indian Penal Code, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 Indian Penal Code. However, we do not agree with the further submission that absence of a complaint under Section 195 Criminal Procedure Code falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no 'Rasta Roko Andolan'. Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 Indian Penal Code are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned.”

In the present case, admittedly there having been no complaint filed under Section 195 of the Code of Criminal Procedure as regards the commission of an offence punishable under Section 188 of the IPC, the charge framed by the learned trial Court under that provision (Section 188) cannot be sustained.

Consequently, the charges framed by the trial Court in respect of offences punishable under Sections 188 and 308 of the IPC are hereby quashed and the petition is allowed to the above extent.

The contention of Mr. Ahluwalia being that in fact the offence punishable under Section 308 IPC was only added by the investigating agency to beat limitation in terms of Sections 468 and 469 of the Cr.P.C., with the FIR having been initially registered for the commission of offences punishable under Sections 188/290/336 read with Section 34 of the IPC, it would now be up to the prosecution to file an application in terms of Section 473 Cr.P.C. for seeking extension of period of time for limitation, or alternatively to show the trial court whether limitation would in fact be 'negated' in terms of Section 472 Cr.P.C.

Thus, this petition is partly allowed and disposed of, while sustaining the charge framed under Section 290 IPC, with the trial Court to consider framing of a charge under Section 336 of the IPC, upon consideration of the applicability of Section 472 Cr.P.C., or for consideration of any application to be filed for extension of time in terms of Section 473, as the case may be.

31.05.2018
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes