

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

CRR-2206-2018 (O&M)

Date of Decision:-30.10.2018

Harvinder Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Tejinder Pal Singh, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this revision petition, the petitioner assails order dated 11.4.2018 passed by learned Additional Sessions Judge, Ambala, whereby an application filed by the petitioner/accused seeking his discharge, has been dismissed.

A few facts, necessary to notice for disposal of this revision petition, are that one FIR i.e. FIR No.0123 dated 2.6.2016 registered under Section 302 of Indian Penal Code, 1860 at Police Station Naraingarh, Ambala was lodged at the instance of Suresh Kumar, wherein it has been alleged that his house is situated adjacent to the house of Harvinder Singh (petitioner) and that there was a dispute regarding demarcation. It is alleged that on 2.6.2016, Harvinder Singh alongwith his labourers started digging foundation of the plot and when he objected to the same he got enraged and picked up a 'stick' and inflicted a blow with the same on the complainant. It is alleged that the complainant, however, managed to hold the 'stick' and

thereafter said Harvinder Singh caught hold of complainant's father namely Kehar Singh and hit him against the wall and his father hit the gate and fell down in the drain and sustained injuries. The complainant's father was taken to hospital, where he was declared dead.

Initially the aforesaid FIR was registered for offence under Section 302 of Indian Penal Code, 1860 but after investigation, the police filed a cancellation report, which was not accepted and the learned Magistrate took cognizance on the basis of a protest petition filed by the complainant and the learned Sub-Divisional Judicial Magistrate, Naraingarh proceeded to summon the accused for offence under Section 304 of Indian Penal Code, 1860 vide order dated 9.11.2017 (Annexure P-3). The case was thereafter committed to the Court of Sessions. Thereafter, the petitioner moved an application (Annexure P-4) seeking his discharge, which was dismissed by the Court of learned Additional Sessions Judge, Ambala vide impugned order dated 11.4.2018, which has been assailed by way of filing the present revision petition.

The learned counsel for the petitiioer has submitted that the petitioner has falsely been implicated in the present case and infact during the course of investigation, the police had found the petitioner innocent as no evidence could be collected to show that it was a case of homicidal death. The learned counsel has further submitted that infact even the doctor, who has been examined as PW-1, has virtually given a clean chit by opining that the cause of death is 'IHD' and its sequele and its complications. The learned counsel has submitted that infact the deceased was having several ailments and had already suffered two heart attacks and that the cause of death is also infact due to his ailments.

I have considered the aforesaid submissions and have also perused the documents annexed with the petition.

A perusal of the FIR would show that specific allegations have been levelled against the petitioner to the effect that he had caught hold of the deceased and had pushed him against the wall as a result of which he hit against a gate and fell down in the drain. When the doctor stepped into the witness-box, he has stated to the following effect:-

“.....In view of that our opinion in this case is that the cause of death is IHD and its sequelae and its complications and in this regard our opinion is Ex.P9 which bears my signature as well as signature of Dr. Ambrish Mangla.

On 18.06.2016 police moved an application Ex.P10 before the MO, GH, Naraingarh for seeking opinion whether injuries received by injured Mr. Kehar Singh can be caused by after pushing him with the wall and the said injuries are dangerous to life or not, on which Dr. Ambrish Mangla gave his opinion that possibilities of these injuries being caused by pushing and falling on wall cannot be ruled out and these injuries where minor injuries and in routine do not cause death.....”

During the course of cross-examination, he had explained the meaning of ‘IHD’ by stating to the following effect:-

“The meaning of IHD refer to above is in examination-in-chief is Isochemic Heart Disease. It is correct that Isochemic Heart Disease is the common name of Coronary Artery Disease (CAD) and it refers to unstable angina, myocardial infarction and can cause sudden heart attack leading to death.”

A perusal of the aforesaid statement of doctor shows he has stated to the effect that the possibility of injuries having been sustained on

account of a push against the wall cannot be ruled out, though it has also been stated that such like minor injuries in routine do not cause death. From the aforesaid statement, it can safely be said that the act of the petitioner in pushing the deceased against the wall contributed in causing the death of deceased, though under normal circumstances, in case of a healthy person, he may have survived. In any case, when an act is committed so as to cause an injury on a vital part like head, an inference as regards the state of mind and intention of the person committing such act can safely be drawn against him to effect that such act was committed with an intention to cause such bodily harm, which could even lead to his death. The mere fact that person to whom such injury is inflicted happened to be sick or infirm would not take the act out of the mischief of culpable homicide on the ground that a healthy person could have survived such attack.

In view of the aforesaid discussion, I do not find any infirmity in the impugned order, whereby the application for discharge has been declined. There is no merit in this revision petition and the same is hereby dismissed.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

30.10.2018

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No