

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

CRM No.M-18106 of 2018 (O&M)

Date of Decision: May 01, 2019

Parwinder Singh alias Souni Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Ahluwalia, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.R.S.Rai, Senior Advocate with
Mr.D.S.Brar, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

Petitioner Parwinder Singh alias Souni Singh has filed this petition under Section 482 Cr.P.C. against State of Punjab and other respondents, for setting aside the order dated 27.02.2018 passed by learned Addl. Sessions Judge, Patiala in Criminal Complaint No.3T/21.07.2011, wherein, it has been held that no offence under Section 331 IPC is made out against accused persons and remanded the matter back for trial to the Court of learned Chief Judicial Magistrate, Patiala.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 and 3 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 Parwinder Singh alias Souni Singh filed the complaint under Sections 323, 325, 327, 506, 166 and 34 IPC against Gurinder Singh, SHO and Jagga Ram, Hawaldar. As per the complainant, case No.24 dated 11.03.2009 under Sections 324, 323, 427, 148 and 149 IPC was registered at Police Station Bhadson, District Patiala against the petitioner, his brother Sandeep Singh and some other persons, on the basis of false facts on the complaint of Gurvinder Singh. After four months, offence under Section 326 IPC was got added on the basis of incorrect reports and in connivance. The petitioner, his brother and Gurjant Singh applied for anticipatory bail, upon which petitioner and Gurjant Singh got bail on 06.08.2009 but petitioner's brother Sandeep Singh's bail was dismissed. On 09.10.2009, petitioner and his brother were again called to Police Station Bhadson and Jagga Ram, Hawaldar, asked them to give ₹1 lakh to the SHO and threatened that otherwise they will have to face the consequences. They also went to SHO, who also asked for ₹1 lakh from them. As per the allegations in the complaint, when the petitioner said that they are not in a position to give this much amount, then SHO indicated Jagga Ram, who slapped the petitioner, which hit on his right ear and his ear got numb and stopped hearing. The petitioner was in unbearable pain and started crying while holding his ear. Then the SHO started abusing the petitioner and said 'saala natak karda hai, is nu nanga karo'. It is also in the complaint that petitioner's medical examination was conducted by the doctor and he was sent to ENT specialist.

evidence, accused were summoned under Sections 323, 325, 327, 506 and 166 read with Section 34 IPC. Then, pre-charge evidence was recorded by learned JMIC, Nabha and vide order dated 31.10.2015, charge was framed against the accused. This order was challenged by way of revision and vide judgment dated 14.12.2015 passed by learned Addl. Sessions Judge, Patiala, the trial Court was directed to pass fresh order for framing the charges, if any, after considering the complete evidence in proper manner and applying its judicial mind. Learned JMIC, Nabha, by discussing the evidence in detail for the purpose of charge, produced before it, found that there are sufficient grounds for presuming that both the accused have committed offence punishable under Sections 331, 330, 506, 166 read with Sections 107 and 34 IPC. It is also held that offence under Section 331 IPC is exclusively triable by Court of Session, therefore, the complaint case was committed to the Court of Session, Patiala for 13.09.2016. After committing of the complaint case, learned Addl. Sessions Judge, Patiala, vide impugned order dated 27.02.2018 found that no prima facie case under Section 331 IPC is made out against accused persons. The other offences alleged against the accused persons are triable by Magistrate, as such, case was sent back to the Magistrate for trial after hearing the parties on the point of charge etc. Aggrieved from this order, present petition has been filed.

The only point argued by learned counsel for the petitioner is that the order passed by learned JMIC, Nabha, was correct and that was passed on the basis of evidence, which has been appreciated in proper and right perspective whereas learned Addl. Sessions Judge, Patiala, while passing the impugned order, has wrongly appreciated the evidence minutely.

statement of Dr.Sanjay Mathur, given in the Court in pre-charge evidence, where he stated that on 10.10.2009 at 9.00 p.m., when he was on night duty in Emergency of Civil Hospital, Nabha, he examined Parwinder Singh, who had been referred for ENT Specialist Opinion by Dr.Harjinder Singh, the then Medical Officer at Civil Hospital, Nabha, who had issued MLR of Parwinder Singh. The doctor stated in his statement that he examined the patient again on 30.10.2009. He found that perforation had completely healed and there was only a slight retraction of the ear drum. The PTA report from Govt. Medical College showed mild sensorineural hearing loss in the right ear. He also stated in the chief-examination that sensorineural loss is permanent in nature. Then he stated in this cross-examination that loss of hearing is a mild loss averaging 20 and 40 decibel. More than 90 decibel loss at 500 to 2000 Hz frequency is a total hearing loss.

The perusal of this statement of the doctor that this sensorineural loss is permanent in nature, for framing of the charge, at this stage, is to be considered by the Court. At the time of framing of the charge, the Court is only to see prima facie case and not to discuss the evidence, at this stage, for the purpose of conviction. Even strong suspicion is sufficient for framing of the charge. The approach of learned Addl. Sessions Judge, Patiala, to discuss the evidence recorded before the Magistrate for the purpose of charge, minutely and then to assess loss of hearing in detail, is not required. This exercise by the Court of Session is against the law. As the doctor has said that whatever loss is in hearing that is permanent in nature, therefore, the Court cannot substitute its opinion and can say that there is no loss of hearing or it has been healed etc.

dated 27.02.2018, is against the law and the same is liable to be set aside.

Therefore, finding merit in the present petition, the same is allowed. The impugned order dated 27.02.2018 passed by learned Addl. Sessions Judge, Patiala is set aside. Learned Addl. Sessions Judge, Patiala, is directed to proceed with the trial as per law.

May 01, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No