

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

CRM No.M-23544 of 2015 (O&M)

Date of Decision: March 11, 2019

Hardeep Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Rakhi Sharma, Advocate
for the petitioner.

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

Mr.Mohit Rampal, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner Hardeep Singh has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Gurpreet Singh, for quashing of impugned order dated 03.12.2014 passed by learned JMIC, Ajnala, vide which the application filed by the petitioner for sending the case file of cross-case titled as 'State vs. Harbhajan Singh, of case FIR No.143 dated 07.07.2009 under Sections 326, 324, 32, 148 and 149 IPC, registered at Police Station Lopoke, District Amritsar, has been dismissed and impugned judgment dated 11.05.2015 passed by learned Addl. Sessions Judge, Amritsar, vide which the revision petition filed by the petitioner was

also dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 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.

The perusal of the record shows that an application has been filed before learned JMIC, Ajnala, for sending the case to learned lower Appellate Court. It is mainly stated in the application that case regarding occurrence titled as 'Gurdeep Singh vs. Hardip Singh' under Section 307 IPC is pending in the Court of learned Addl. Sessions Judge, Amritsar and therefore, the cross-case be also sent to the same Court. Learned JMIC, Ajnala, after hearing the parties, dismissed the application, by discussing version of both the parties and held that mere mentioning of time as 11.30 a.m. cannot be termed as sufficient to make it a cross-case. In cross case, one party is aggressor and other is receiver. The matter is to be decided by evidence that which party is aggressor. But here, both the parties are stating different places where they quarreled and therefore, the application was dismissed. Against this order, a revision was filed and learned Addl. Sessions Judge, Amritsar, vide impugned judgment dated 11.05.2015, dismissed the revision petition. Aggrieved from above-said impugned order and judgment, present petition has been filed.

From the record, I find that learned Addl. Sessions Judge, Amritsar, has relied upon the statement of complainant Hardip Singh got recorded by him before SI Deva Singh on 08.07.2009, which is as under:-

“He is an agriculturist. On 7.7.2009 at about 11.00 A.M., he alongwith his brother Gurdeep Singh were returning from Village Chawinda Kalan to their Behak on their Maruti Car bearing No.PB-02-V-5955 after taking Rs.1,10,000/- from their

Commission Agent Ranjit Singh and when they reached near the house of Gurmeet Singh son of Anokh Singh, then Gurpreet Singh son of Harbhajan Singh stopped his black colour Bolero Car in such a way in front of them that he made them to stop their Maruti Car. Then from the Bolero Car, Sukhdev Singh and Tarlochan Singh sons of Bhupinder Singh having belchas came out and they with the attack of belchas got broken the front mirror of their Car. Gurpreet Singh son of Harbhajan Singh and Harbhajan Singh son of Surjan Singh, Angrej Singh, Dilbagh Singh sons of Harbans Singh also came out from Bolero Car and they snatched 12 Bore gun from him and pressed the trigger of the gun, as a result of which, firm came out from the same. Then Harbhajan Singh gave a kirpan blow, which hit on his right arm. Gurpreet Singh gave a kirpan blow, which hit on his left arm. Paramjit Singh son of Sarup Singh armed with kirpan, Gurpreet Singh son of Paramjit Singh armed with dang, Bhupinder Singh son of Anoop Singh armed with kirpan, Ranjit Singh son of Sarup Singh armed with handle of spade made attack on Gurdeep Singh. They also tried to snatch 12 Bore gun of his brother Gurdeep Singh, but when his brother insisted, Paramjit Singh gave a kirpan blow, which hit the middle finger of his left hand and other accused also caused injuries on his person as well as on the person of his brother”.

Then, learned Addl. Sessions Judge, Amritsar, discussed the statement got recorded by Gurpreet Singh in the complaint titled as 'Gurpreet Singh vs. Hardip Singh', as under:-

“In year 2009, his mother was Sarpanch of the village. There is land measuring 83 Kanals - 4 Marlas situated in revenue estate of their village, ownership of which vests in Panchayat, but Hardip Singh, Gurdip Singh sons of Thakur Singh, Gurkirat Singh son of Gurdip Singh, Balraj Singh son of Hardip Singh, all residents of village Chawinda Kalan had been in forcible possession for the last more than 15/20 years. As his mother Smt.Piar Kaur had moved an application against them before DDPO, Amritsar, on 07.07.09 at about 10:30 AM, DDPO, Amritsar and BDPO, Chogawan visited the spot for inspection and inspected the land in question. He along with his father Harbhajan Singh, Bhupinder Singh, Member Panchayat Bawa Singh, Jaspal Singh, Paramjit Singh, Angrej Singh, Dilbagh Singh, Rachhpal Singh, Mohan Singh, Kuldip Singh alongwith other respectable persons accompanied DDPO and BDPO to the spot and when they left, all went to the house of Bhupinder Singh and were sitting for tea. At about 11:30 A.M, Hardip Singh armed with double barrel gun,

Gurdip Singh armed with double barrel gun, Gurkirat Singh armed with Kirpan, Balraj Singh armed with Choti Gandasi came and started raising exhortation outside the house of Bhupinder Singh that "Tusi Kade Kise Afsar Nu Bulande Ho Ate Kade Kise Afsar Nu Bula Ke Sadi Peli Wakhande Ho, Jis Te Sada Najaij Kabja Hai. Niklo Bahar Aaj Tuhane Wekh Lende Hain". At this, they came outside the house of Bhupinder Singh. His father told Hardip Singh that as the matter is pending before court, and they should not fight with each other. Hardip Singh raised lalkara and instigated Gurdip Singh to fire direct gun shot on them to teach them lesson for showing the officers the land in question. At this, Gurdip Singh with intention to kill fired two gun shots, but they managed to escape themselves. Then Hardip Singh fired a gun shot directly on them with an intention to kill, but again they managed to escape. Then Hardip Singh again fired a gun shot with an intention to kill during which his brother Bhupinder Singh caught hold Hardip Singh from back side due to which direction of gun got disturbed and bullet landed on his left feet two finger adjacent to thumb. At this, they raised alarm Bachao- Bachao and few persons came forward to rescue them, due to which all the assailants ran away from the spot while leaving their respectable weapons at the spot. His father, brother and other persons arranged conveyance and took him to the police station, from where he was referred to Civil Hospital, Lopoke from where he was further referred to Guru Nanak Dev Hospital, Amritsar. Then he was shifted to Ranjit Hospital, Amritsar. Information was given to the police of P.S Lopoke and an FIR No. 143/09 dated 07.07.09 under section 307/34 IPC and 25/27 of Arms Act was registered against the accused. Due to political pressure, FIR stated above was cancelled and as such he filed the present complaint".

The perusal of these statements clearly show that occurrence took place on 07.07.2009. In the complaint case, time of occurrence is stated as 11.30 a.m. whereas in the FIR, it is 11.00 a.m. The place of occurrence in complaint case is stated to be house of Bhupinder Singh, whereas, in the FIR, it is stated that occurrence took place near the house of Bhupinder Singh. The parties in both the cases are the same but in the complaint case, some more accused have been mentioned. In the complaint case, Gurpreet Singh has suffered injuries whereas in the FIR case, injuries

The perusal of the record shows that though, place of occurrence, mode of occurrence and how occurrence occurred, has been mentioned separately but it happened on the same day at same time, which means that this is case of version and cross version. It is for the trial Court to decide on the basis of evidence as to who is aggressor party and whose version is correct and whether fight has actually taken place. Because it is case of version and cross-version, so different versions have been alleged by each of the party, which is to be decided by the same Court after appreciating the evidence. Therefore, these cases should be tried by one and the same Court.

In view of the above discussion, I find that the impugned order dated 03.12.2014 passed by learned JMIC, Ajnala and judgment dated 11.05.2015 passed by learned Addl. Sessions Judge, Amritsar, are not as per evidence and law and the same are set aside.

Therefore, finding merit in the present petition, the same is allowed. Learned Magistrate is directed to commit the case to the Court of Session, Amritsar, as per law, where the other case is stated to be pending.

March 11, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No