

S.No.205

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

Date of Decision:08.05.2019

1. CRM-M-2643 of 2016 (O&M)

Mohan @ Mohni

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

2. CRM-M-5606 of 2016 (O&M)

Mohan @ Mohni

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. R.N. Kush, Advocate
for the petitioner.

Mr. Vikramjit Singh, Addl. AG,
Haryana.

Mr. S.K. Verma, Advocate for
the complainant.

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two petitions, i.e. CRM-M-2643 of 2016 and CRM-M-5606 of 2016; seeking the same relief, i.e. a direction for further investigation of the case through CBI; by restoring another petition CRM-M-21784 of 2011; which stands already finally decided vide 28.04.2015.

For the sake of convenience, the facts are being taken from CRM-M-2643 of 2016.

This case has become a classic example of how the quest for perceived fairness in favour of one party can lead to abject unfairness qua the other party. This case is also an example of how the caste bias,

meticulously interwoven with the irrelevant and ambiguous facts can be used by the accused to frustrate the very process of the Court, and also, this case is an example as to how the benevolent indulgence by the Courts can be misused by a clever litigant to hijack the entire process of administration of criminal justice itself in a particular case. Admittedly, it an injured eye-witness account case. Admittedly, two persons have been killed by fire shots, alleged to have been fired by the accused from their licensed guns. Admittedly, the alleged weapons of offence already stand recovered. Admittedly, the Police after their initial investigation filed challan against specified persons and found some others as innocent; ensuring fairness in the investigation. Admittedly, the charge against the accused already stood framed; as far as eight years back. However, so far the accused have been successful in avoiding the consequences of the alleged offence committed by them; and have succeeded in keeping at bay the entire process of trial by competent court of law.

The facts; as involved in this case are; that the FIR No.106 dated 28.02.2010 came to be registered at Police Station Narnaund on the statement of one Ram Kesh. It was alleged in the FIR that the accused Paras Ram, Om Parkash and their sons wanted to take illegal possession of ‘*Shamlaat*’ land and certain other spaces which were being used by the villagers for keeping their garbage. A Panchayat was called in this regard and the accused were asked not to encroach upon the land and not to interfere with the possession of the persons who were already using the said land for the above said purposes. However, on 27.02.2010, at about 10:00

P.M., Paras Ram, Om Parkash, Vijender alias Kalu, Mala, Mohni, Bhilu, Krishan, Surender, Devi Ram, Navin, Sonu, Chand, Ganga Dutt and 4-5 other persons reached at the place of occurrence, armed with Guns, Pistols, 'Lathies', 'Jailies' and 'Kassies' (spades) for constructing a wall; by making arrangement for light through generator; so as to take forcible possession of *shamlaat* land and the other land in possession of the complainant side. The said attempt of the accused was opposed by the complainant and other persons. Feeling enraged on that, the accused persons started firing with their guns and pistols and also started throwing stones and bricks on the complainant party. In the process, two persons, namely, Sanjay and Manoj alias Vinod were caused gun-shot injuries and they succumbed to the said injuries. Besides these two, the other persons, namely, Azad, Sunder, Kuldeep, Balraj, Mawasi, Mahipal, Parvel and Pirthi also received injuries.

The Police conducted investigation and after completing the same; found ten persons involved in the incident, whereas, five persons were found to be innocent. Accordingly report under Section 173 Cr.P.C was filed on 01.06.2010. Thereafter, the charge was framed by the trial Court. The process of recording of prosecution evidence was also started. After recording of statement of some of the witnesses, the prosecution moved application under Section 319 Cr.P.C for summoning of additional accused to face the trial. Accordingly, vide order dated 14.05.2011, five persons, namely, Kalam Singh, Devi Ram, Surender, Navin @ Sunil and Jiwana Ram, were summoned by the trial court while exercising powers under Section 319 Cr.P.C. This order of the trial Court passed under Section

319 Cr.P.C was never ever challenged by the accused. Hence, the same attained finality long ago.

Even, thereafter, one of the accused, namely, Mohan alias Mohni filed CRM-M-21784 of 2011 seeking further investigation of the case by some independent agency, preferably by CBI. In this petition, certain allegations were levelled against the SHO of the concerned Police Station that he belonged to a particular community and the complainant side also belonged to his community, therefore, the complainant side on instigation of and in connivance with the said SHO of the Police Station tried to dispossess the side of the accused of their house which has been in existence for the last 40 years. Therefore, the SHO concerned be also made an accused in a criminal case. Besides this, there were certain pleadings regarding the inconsistencies in the '*Roznamcha*' (the daily diary) of the Police regarding presence of the Police persons in the village at the time of alleged occurrence and some of them having received injuries in the incident, as well as, one of the Police persons, allegedly, having expired in the incident. It was also pleaded that some of the accused also suffered injuries and the prosecution has not accounted for those injuries in the report presented before the trial Court. The said petition was disposed of vide order dated 02.11.2011 by passing following operative directions:-

“This is a petition for seeking further investigation of the case bearing FIR No.106 dated 28.02.2010 under Sections

302/307/148/149 and 120-B IPC and 25/27/59 of the Arms Act,

Police Station Narnaud, District Hisar.

Learned DAG has stated that the State would have no objection in getting the matter reinvestigated by Special Investigation Team headed by an Officer not below the rank of Deputy Inspector General of Police and has further invited learned counsel for the petitioner to give a panel of three or four such serving Officer so that one of them could be deputed for this task.

Learned counsel for the petitioner has accepted this proposal and handed over a list containing the names of Navdeep Singh Virk, IPS, Sirikant Jadhav, IPS, Anil Rao, IPS and P.S. Ranga, IPS as his nominations for the Officer to head the Special Investigation Team.

Let the Special Investigation Team be constituted under anyone of these four Officers as has been agreed by learned DAG within a period of two weeks and let the final report be submitted on or before 28.02.2012 before the trial Court.

It goes without saying that the trial Court would have the discretion to extend the time in case a case is made out therefore.

Till then the trial shall remain stayed.

Petition is disposed off in the above terms.”

Pursuant to the above said order passed by this Court, the Special Investigation Team was constituted as per the directions of this

Court and the report was presented before the trial Court. However, the trial Court did not accept the report filed by SIT and vide order dated 13.08.2012, ordered that investigation had not been conducted as per directions issued by this Court and further that the directions issued by this Court vide order dated 02.11.2011 be complied with.

The State of Haryana challenged the said order by filing Crl. Revision No.3453 of 2012 asserting that the directions of this Court had already been complied with and that there was no defect in the investigation. Taking advantage of the Revision filed by the State of Haryana, even the petitioner of Crl. Misc. No. M-21784 of 2011, which was already stood disposed of, filed an application that the disposal order dated 02.11.2011 be recalled and the investigation of the case be handed over to some independent agency. Accordingly, the order dated 02.11.2011 was ordered to be recalled by passing the following operative order:-

“I find this stand to be fair and consequently recall the order dated 02.11.2011. Criminal Misc. No. M-21784 of 2011 be revived and listed on 03.12.2013 as per roster after obtaining orders from the Hon'ble Chief Justice.”

In view of the above facts, the above said CRM No.M-21784 of 2011 as well as CR No.3453 of 2012 came to be heard jointly by a co-ordinate Bench of this Court. At the time of re-hearing of the above-said petition, the petitioner had submitted that the allegations in the FIR that the accused side wanted to take illegal possession of the common land; was factually incorrect; because as per certain documents of Civil Court record,

the said house was constructed by Paras Ram- accused about 40 years back and that this fact was not appreciated by the SIT. Still further, it was submitted that neither the statements of the accused nor of the villagers were recorded by the SIT. Still further, it was again emphasized, that as per DDR No.27 dated 27.02.2010 and the DDR No.3, dated 28.02.2010, the Police had left for this village from the Police Station, therefore, they were present in this Village at the time of occurrence. Some Police persons were injured also in this incident. Still further, it was submitted that even four persons from the side of the accused party had received injuries and they were shifted to the Government Hospital, Hansi. However, that version has not been accounted for even by the SIT. One more argument was raised by the learned counsel for the petitioner that two blind persons have been arrayed as accused whereas they were not even residing in the house in dispute. Therefore it was argued that two of the accused are 100% blind as per the report of Doctors of PGI and Doctor of Government Hospital, Hisar, despite that, they have been made accused in this case.

After hearing the parties, a co-ordinate Bench of this Court, vide order dated 28.04.2015, again disposed of above-said CRM-M-21784 of 2011 as well as the Crl. Revision No.3453 of 2012, with the following operative order:-

“By applying the ratio of judgments as discussed above and also considering the peculiar facts and circumstances of the case, further investigation is required to be done as both the parties have received injuries because of land, in dispute

regarding which the civil litigation is also pending. It has also been brought to the notice of the Court that some of the police officials were also present who have received injuries during the said occurrence. Otherwise also, the State has no objection in further investigation of the matter.

In view of the facts as mentioned above, let the Special Investigation Team of three members be constituted, which shall be headed by the Officers not below the rank of Superintendent of Police. The Special Investigation Team shall submit its final report before the trial Court within a period of three months from the date of receipt of certified copy of this order. However, the trial Court would have discretion to extend the time, in case, some special reasons are there for not concluding the inquiry within the prescribed period. During this period, the proceedings before the trial Court shall remain stayed.

The State is directed to take necessary action in this regard.

The petition is, accordingly, disposed of in the above said terms.”

Therefore, this Court had again passed an order for constitution of a Special Investigation Team; with a further direction that the SIT shall file final report within a period of three months. The trial Court was also given discretion to extend the time, in case some special reasons were

brought out for the same. The proceedings of the trial Court were again stayed by this Court till conclusion of the investigation by SIT.

Pursuant to the above said order passed by this Court, the SIT constituted under the supervision of Satender Kumar Gupta, IPS Superintendent of Police, Hisar, submitted its report dated 28.07.2015 before the trial Court. In this report, it was specifically reported by the SIT that the SIT visited the village, inspected the spot and repeatedly joined all the parties in the investigation. After constitution of the Committee on 09.06.2015, the SIT, headed by Superintendent of Police, Hisar visited the village on 20.06.2015 and enquired the matter from the side of the complainant. The complainant side re-asserted their version. Thereafter, on 25.06.2015, the accused party was summoned to appear before SIT in the Office of Superintendent of Police, Hisar. However, none of the accused appeared before SIT; except petitioner Mohan. The petitioner repeated his same version before SIT as was pleaded by him in the petition itself. However, he admitted that when the villagers attacked his uncle then his uncle Paras Ram fired shot from his licensed gun in his defense; but he claimed that at the time of incident, only four accused were present and the remaining six accused have been wrongly implicated by the Police. On 27.06.2015, the other accused appeared before SIT at the SP Office, Hisar and they were also joined in the investigation. In the second round of investigation by joining the respective parties, the SIT joined the complainant party in investigation on 28.06.2015 and, thereafter, on 29.06.2015, the accused party was again joined in the investigation.

However, the respective parties reiterated the respective versions. On 30.06.2015, the Police officials, who were involved in the original investigation and the ones posted at the said Police Station at the relevant time, were also made to join the investigation. On 01.07.2015, the then SHO Vinod Kumar Kajal was also joined in the investigation. The SHO reiterated his version that after investigation, ten persons were found involved in the incident and, accordingly, the challan was rightly filed against them; whereas five persons were found innocent and no challan was filed against them.

After joining all the parties in the investigation, as mentioned above, and by conducting the investigation by open and secret missions, the SIT presented its report before the trial Court. It was specifically found out by the SIT and was also so reported in its report filed before the trial Court; that the then SHO Vinod Kumar Kajal did not visit the village before or after the occurrence at all nor did he conduct any meeting with the particular community as alleged by the complainant. Therefore, there is no question of the then SHO being involved in this matter in any manner whatsoever. The SIT also found that the rifles and live cartridges/ empty cartridges and the material used in the case were duly recovered from Paras Ram accused, Krishan accused and Mala. Qua the injuries suffered by the Police personnel and death of one of them, it was categorically found by the SIT that no police person was present at the time of incident. None of the Police persons were injured in the incident. It was further found that although one of the Police persons posted in the said Police Station at the relevant time had died

at about the same time, however, he had died a natural death because of heart attack as per all the medical records. Regarding attempt of the accused to connect the incident involved in the present case to another incident at some other village at different point of time, it was found by the SIT that there is absolutely no connection between the two incidents. It was further found that it was just a matter of chance that both the incidents happened during the time when above said Vinod Kumar Kajal was the SHO of the said Police Station. Regarding the culpability of the accused involved in the case, the SIT reiterated that the challan has rightly been filed against ten persons. So far as other five persons including the two persons who are stated to be blind are concerned, the SIT reported that right from the first stage, the Police have not filed any challan against them because as per the Police investigation, they were not found involved in the case. However, these five persons have been summoned by the trial Court in exercise of power conferred upon it under Section 319 Cr.P.C. Accordingly, the said report was submitted by the second SIT before the trial Court; pursuant to the order dated 28.04.2015 passed by this Court in above-said CRM No. M-21784 of 2011.

In the meantime, the accused had challenged the order; of further investigation by SIT; dated 28.04.2015 passed in above said CRM No. M-21784 of 2011 before the Hon'ble Supreme Court vide Special Leave to Appeal (Criminal) CRLMP No.20040 of 2015. But the Supreme Court dismissed this application for leave to appeal vide order dated 30.11.2015.

However, the Supreme Court had further observed that in case the petitioner

was not satisfied with the report filed by the SIT then he can take steps before the appropriate forum. Therefore, it is clear that the order passed by this Court in CRM-M-21784 of 2011 had also attained finality; although with a possible liberty to the petitioner to take legally available pleas qua the report submitted by the SIT before the trial Court during the trial.

However, misinterpreting the order of the Supreme Court and asserting that the Supreme Court had granted liberty to the accused to file objections against the report under Section 173 Cr.P.C submitted by the SIT, the petitioner preferred objections before the trial Court against the above said report of second SIT dated 28.07.2015. In these objections, once again, it was repeated by the accused that the SIT has not properly dealt with the issue of the accused also suffering injuries in the same incident; the SIT has not given any explanation for the death of Ram Niwas, ASI who expired at about the same time. The SIT did not give a finding to the effect that the Police was party in opening the attack at the house of Paras Ram. A question was also raised as to why the SIT did not call the Police responsible for the occurrence; along with the complainant party, as was held in case of trial relating to the incident of other village Mirachpur, because the same SHO was the in-charge of the Police Station at the time of both the incidents. It was also asserted that the SIT was to file supplementary challan under Section 173(8) Cr.P.C and not the verification report qua the earlier investigation conducted by the Police. Therefore, the SIT has not complied with the directions of the High Court.

Upon filing of the objections by the accused, even the trial

Court did not proceed with the objections filed by the petitioner/ accused, rather, vide order dated 14.12.2015 the trial court observed that since the SIT has filed the report pursuant to the order dated 28.04.2015 passed by the High Court, therefore, the propriety and judicial discipline demands that the trial Court should not deal with the objections filed against the investigation report filed by the SIT and that the accused/ petitioner should take appropriate steps before the High Court in this regard. Besides this, since the additional accused had been summoned vide order dated 14.05.2011 by exercising powers under Section 319 Cr.P.C, therefore, the trial Court adjourned the case for the prosecution to specify the particulars of the additional accused who were to be produced before the Court.

Taking a cue from the above said order of the trial Court, the accused/ petitioner Mohan has filed the present CRM No.M-2643 of 2016 seeking further investigation of the case through CBI on the same ground that his objections which have been filed against the report of the SIT had not been addressed to by the SIT. Therefore, the grievance of the accused has not been redressed even by the second SIT. After having filed the present petition, the same petitioner filed another petition, CRM No.M-5606 of 2016, for the same relief, i.e. seeking further investigation of the case through CBI after restoring the main petition, i.e. CRM No. M-21784 of 2011 which had already stood disposed of second time on 28.04.2015; as mentioned above.

Accordingly, it is both these petitions, i.e. CRM No.M-2643 of 2016 and CRM No.M-5606 of 2016 which have come up for hearing before

the Court. Both these petitions have been heard together and are being disposed of vide common order. In both the petitions, the petitioner has taken the same grounds and has raised the same plea qua his objections against the SIT; as has been mentioned in the aforesaid paragraphs.

While arguing the case, learned counsel for the petitioner has again reiterated that it was the complainant side who was the aggressor. The accused was having a house at the spot for the past 40 years. Therefore, it was the complainant side who wanted to dispossess the main accused of the said house. It is further submitted that the entire incident was committed by the complainant side which belongs to the same community as that of the SHO of the concerned Police Station. Therefore, entire aggression was committed by the complainant side at the instance and in collusion with the said SHO of the Police Station. Counsel has further made an attempt to draw parallel with the incident which happened at another place in some other village at some other point of time; to submit that it was the same SHO who was posted in the same police station at that time also and in that case, the trial Court had found fault with the SHO. The modality of attack in the present case is also the same as was in the attack in the said another village. Hence, the accused are the victims and not the aggressors. Counsel has further submitted that as per the daily diary reports; which have been taken by him under RTI Act, the Police had left the Police Station for coming to this village, therefore, this would show that the Police was present in this village, however, SIT has recorded that the Police was not present at the relevant time in this village. Counsel has also argued that the

injuries on the accused have not been sufficiently explained by the SIT and the SIT has wrongly recorded that no police person was injured or died in the incident which happened in this village.

On the other hand, while referring to the reply; and the additional reply which was filed pursuant to the order passed by this Court, the learned State Counsel has submitted that the SIT has rightly held that the challan was correctly filed by the Police. It is further submitted that regarding five persons, including the two persons who are stated to be blind, like the original investigation; even the SIT has submitted a report that these persons were innocent. However, these persons already stood summoned by the trial Court as additional accused in an application moved by the prosecution under Section 319 Cr.P.C and this order has attained finality. So far as the complicity of the Police personnel in the incident is concerned, it is submitted by counsel for the State that although as per the latest affidavit filed by the Police, some Police persons had gone to the concerned village, however, they had returned in the morning because when they had reached there, no incident had taken place and, therefore, by making the people understand they had come back. However, since they were on patrolling duty as well, therefore, they returned after quite some time. However, that does not mean that these Police persons were at the said village throughout this period. It is further submitted that no Police person was present at the spot when the incident of firing happened. Still further it is further submitted that since no Police person was present at the time of incident, therefore, there is no question of any police person being injured in this

case. The allegation of the petitioner in this regard is totally unsubstantiated. So far as the death of one Police person ASI Ram Niwas is concerned, it is submitted that as per the affidavit filed by the Police, he died much later on 21.03.2010 due to cardiac failure and this fact is duly corroborated by Chemical Examiner Report, the post mortem report, as well as by the report received from PGIMS, Rohtak. So far as the allegations levelled by the petitioner are concerned; the same are totally misconceived and are designed only to delay the trial. There is no basis for or substance in the argument raised by learned counsel for the petitioner. The intention is only to delay the trial as much as he can. It is further submitted that right from the beginning, the petitioners have been misleading the Courts by filing frivolous petitions. The investigation has been conducted thrice, once originally and, thereafter, twice by the SITs. All the SITs have arrived at the conclusion against the accused persons; against whom the challan was filed by the police. Hence, it is submitted that both the petitions be dismissed with exemplary costs.

Having heard the learned counsel for the parties, this Court is of the considered opinion that there is substance in the argument of learned counsel for the State that both the petitions are based on unsubstantiated allegations which have been investigated into; repeatedly; by the authorities, including two SITs constituted by this Court. All the investigations have come to the same conclusion, qua culpability of some of the accused and qua finding as innocent qua some of the persons mentioned in the FIR.

Hence, both these petitions; on the face of it; are totally frivolous and have

been filed with intention to delay the trial as much as the accused can do. Since the accused are to find out one excuse or the other to delay the trial, therefore, obviously, they would not accept any investigation by any authority, as they have been doing so far. Otherwise, a perusal of the report of the SIT would show that all the concerns of the petitioners have duly been appreciated and investigated into by the Police and findings have been duly recorded on all the aspects.

So far the petitioner and his co-accused have quite succeeded in their design to avoid the net of law by filing repeated petitions on the same grounds. As a result, despite the fact that two persons have been killed in the incident and despite the fact that they are the accused named by the eye witnesses and even the weapon of offence has been duly recovered, the said accused have succeeded in frustrating the trial so far. The result is that the accused; who are alleged to have killed two persons; have drawing benefits from the undue petitions filed by them; whereas the complainant side, who is alleged to have lost two of their family members, is still waiting for the justice.

Despite there being direct allegations against the accused, they have sought to create an impression that it is one particular community / caste which is out to attack anybody and everybody; with the help or connivance of a Police Officer who belong to that particular community caste. This plea is being pushed through on the ground that in some other village, which is a distant place, an incident had happened in which two scheduled caste persons were killed by some anti-social elements belonging

to the particular community, to which the SHO belongs. Although there is no other fact, either pleaded or shown by the petitioner/accused to this effect in any proceedings so far, however, still they have been alleging that in their village also; it was a community attack upon them. This plea is being taken by the petitioners-accused only on one count that the SHO belongs to the same community which was involved in the attack in another village. Since the SHO happens to be the same, therefore; as per the accused; the same community / caste would be presumed to have attacked the accused side in this village as well; in connivance with the said SHO. A vicious attempt has been made by the petitioners/accused; by interweaving the facts of the present case with the allegations qua the incident in other village; to introduce a community bias in the process of administration of criminal justice. This community bias has been pleaded; and is being sought to be metamorphosed into a bias in investigation and, therefore, a plea of unfairness of investigation conducted by the Police has been repeatedly raised by the petitioners/ accused. By pleading this community bias and consequent alleged unfairness in the investigation, the petitioners/accused have succeeded in blocking their trial for eight long years, despite the fact that under the orders of this Court, twice the investigation was conducted by the Special Investigation Teams, which were not particularly comprising the members of the community / caste of the SHO concerned. Rather; members of the SITs were nominated at the option of the accused only. Despite all this, the petitioner/ accused have not felt satisfied by either of the investigations; conducted by either of the Investigating Officers or the SITs.

The reason for the same is obvious; and that is, their design to avoid the trial and to prolong it as much as they can.

Coming to the objections filed by the petitioners-accused against the investigations conducted by the SIT, it is strange that even the trial Court has not bothered to deal with these objections filed by the petitioners/accused. Rather the Presiding Officer of the trial Court also appears to have been coerced by the petitioner/ accused by pleading it to be a case of community bias. Therefore; the trial court has not decided the said objection; so as to proceed further with the process of trial of the accused, instead, the trial Court has observed that it would not be appropriate for that Court to deal with the objections; rather the objections were to be heard by the High Court. This approach of the trial Court is totally against the provisions of Cr.P.C. Firstly, the law does not contemplate any objections by the accused to an investigation report filed under Section 173 Cr.P.C or against any further investigation conducted by the SIT. However, in any case, if any objections are filed by any accused, the same have to be taken only and only as the objections filed against the report under Section 173 Cr.P.C. In that situation, if at all, those objections are required to be dealt with, then it was the job of the trial Court to deal with the same in accordance with law and to arrive at a conclusion in that regard. Therefore, in ordinary course, this Court would have remanded the matter to the trial Court for consideration of the objection filed by the accused in this case. However, since the trial has already been delayed inordinately, therefore, this Court deems it appropriate to deal with the objections filed by the

accused / petitioner while deciding the present petition itself.

So far as the objections filed by the petitioners/ accused are concerned, the same are only in the nature of their defense and the accused would have been at liberty to take all their possible objections / defenses at the time of their defense evidence. None of the objections filed by the accused / petitioner have anything to do with the transaction of firing of shot by the accused and killing of two persons thereby. Rather; it is even admitted by the petitioner himself that there were four persons who fired shot upon the two deceased, although in self-defense. However, the self-defense does not extend to causing death of the other side, particularly when there is nothing on record to show that the deceased were even armed with any weapon. In any case, even if accused had a doubt qua the investigation, they could have taken advantage of any defects of the investigation; so as to impeach the story of the prosecution in the trial. After-all prosecution would succeed in getting the accused convicted only after the prosecution proves the case against the accused beyond reasonable doubt. Hence, any plea, which could be taken as a defense by the accused during the trial; could not be entertained as objection separately; nor could the trial be scuttled for the purpose of decision of the same. There is no provision in Cr. P. C to treat any defense of the accused as a 'preliminary issue' and to decide the same before start of the trial.

Coming to the individual objections raised by the accused/ petitioner, it may not be appropriate to go into merits in details and; lest any prejudice should be caused to the petitioner/ accused. Suffices it to say that

the accused have claimed that it was the complainant side who is the aggressor in this incident. Even if what the accused are pleading is correct; still they may have their remedies against the alleged aggressor in accordance with law, however, that itself, by any means, is no ground even to acquit the petitioners/accused of the charge of murder. The second objection raised by the accused / petitioner; that the accused were also caused some injuries by the other side, also stands in the same stead. For this also, the accused may have a right to proceed against the person causing injuries, if any, and if permitted by law. However, this itself, is again; no ground for acquittal of the accused in the present murder case. At the best, both the above objections can be taken to be in the category of defenses being taken by the accused. However, the facts constituting defense of the accused cannot be appreciated even before the trial starts. This is the job of the trial Court to take into consideration all the relevant facts at the appropriate stage and to separate the grain out of the chaff while delivering the final judgment.

The next objection of the petitioners is that the Police party was also present at the time of incident, some of the Police persons were injured and one Police person was killed also; due to injuries which were caused in the same incident. However, all the investigations conducted by the Police have categorically confirmed that no Police person was present at the spot at the actual time when the incident had happened. Although the record shows, and it had also been found by the investigation teams; that the Police did visit the village regarding the dispute between the parties, however, when

the Police had gone to the village, the incident of killing had not taken place. It was found to be a case of simple altercation at that time. Therefore, by making the people understand the things, the Police party had returned. Qua the injuries to Police persons, it has been found by the investigation agency / SITs that no Police person was injured in this incident. Qua the death of ASI Ram Niwas of Police Station Narnaul, it has been categorically found by the investigation agency SITs that he expired much later on 28.03.2010 and his death had occurred due to cardiac arrest on. This finding of the Investigation Agency is based upon Chemical Examiner Report, Post Mortem report as well as report received from the PGIMS, Rohtak. Therefore, this Court finds no reason to disbelieve the findings recorded by the Police in this regard. Hence, all these findings of the Investigating Teams are upheld. Otherwise also, as observed above, presence of the Police or even sustaining of injury by the Police person; even if presumed to be correct for the sake of arguments, is not even a defense against the charge of committing murder by the accused by firing from their licensed gun, which is being corroborated by the alleged eye witnesses. The offence alleged against the petitioner/ accused is to be tried and appreciated independently on the basis of the evidence led before the trial Court, irrespective of any injuries alleged to have been suffered by the Police Personnel.

Counsel for the petitioner has argued with much vehemence that SHO of the concerned Police Station belonged to a particular community / caste and, therefore, the complainant side, being belonging to his caste, acted in connivance with the SHO and, therefore, attacked the

accused side in a planned manner. In this regard, it deserves to be noted that this issue has been repeatedly investigated by the Police authorities and the SITs constituted by this Court. All the investigations have consistently found that the said SHO was not even present in this village; either at the time of the incident or before that or even thereafter. The petitioner has singularly failed to bring any documents or facts on record showing or even suggesting the presence of that SHO in the village, or to show his complicity in the present incident in any manner whatsoever. The petitioner is flogging this issue without any factual basis; only to create a community / caste bias in the process of administration of justice. This design of the petitioner/ accused is made clear by the fact that they have repeatedly brought in another incident; which is not connected with the present incident at all; and which had happened at another much earlier time and at a distant place, having no concern or connection with the present incident. Since in that incident of another village, some persons belonged to a particular community were convicted and the SHO was adversely commented upon, therefore, the petitioner/ accused is trying to draw a presumption in the process of this trial as well that the said community / caste attacked the petitioner/ accused in connivance with the same SHO. However, there is nothing even to remotely suggest this situation as a matter of fact. The community bias in the matter is only in the concocted perception of the accused / petitioner and has no existence on the ground.

In view of the above, all the objections filed by the petitioner/ accused against the investigation report are hereby dismissed. The trial

Court shall now proceed with the trial of the accused further in accordance with law.

However, since the accused/petitioner have sufficiently dragged the trial by filing frivolous petitions repeatedly, therefore, some coercive directions from this court have become imperative in this case; so as to ensure that the complainant party, who have lost two of their family members; retained the faith in the system of administration of criminal justice and the alleged offenders are made to face the prosecution by completing their trial in the right earnest. Hence, the trial Court deserves to be directed to proceed with the trial with due expediency and to complete the trial within the specified time frame.

In view of the above, both the present petitions are dismissed.

However, the trial Court is directed to proceed with the trial and to dispose of the same by taking up the case on weekly basis. The trial Court shall fix the dates, at least once in a week. The trial shall be completed, latest by 31.12.2019. It is further directed that the trial Court shall ensure that the accused are not unduly absent from the proceedings by moving any frivolous applications for exemption from appearance. It shall also be ensured that the trial is not unduly prolonged by any other application moved by the accused or by the prosecution.

May 08, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No