

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

CRM-M-18564-2019(O&M)

Date of Order: 14.11.2019

Harpal Singh and others

...Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Vibhor Bansal, Advocate, and
Ms. Supriya Arora, Advocate,
for the petitioners.

Mr. Hittan Nehra, Addl.A.G.,Punjab.

Mr. Gurcharan Dass, Advocate,
for respondent no.2(through LRs.)

ANIL KSHETARPAL, J.

The issue which this court is called upon to answer is “whether rejection of previous applications by the Magistrate to commit the case to the court of Sessions debars the Magistrate to form an opinion while appreciating the evidence or material available on the file on conclusion of the trial to commit the case to the court of Sessions particularly when homicide is not disputed?

Some facts are required to be noticed:-

Late Sh. Paramjit Singh was killed on 09.07.1993. Complainant claims that late Sh. Paramjit Singh was killed by the accused mainly the police officials along with Mohinder Kaur whereas respondent-accused claims that he died due to cross firing between the police officials and terrorists. Initially a petition was filed by the grand father of the

deceased (respondent herein) for probe. Directions were issued to the Chief Judicial Magistrate to carry out probe. Chief Judicial Magistrate vide his report dated 27.02.1999 formed an opinion that deceased-Paramjit Singh, who was employed as a constable with the Punjab Police has been accidentally killed in the cross firing between the police and terrorists. After the report, the matter came before the High Court and it was disposed of vide order dated 01.04.2002 granting liberty to respondent-Daljit Singh (grand father of the deceased) to file a criminal complaint which was filed alleging offence under Section 302 IPC. The learned Magistrate after recording preliminary evidence formed an opinion and summoned the accused under Section 304-A and 120B IPC vide order dated 22.11.2003. After appearance, charges were framed under Section 304-A, vide order dated 02.03.2009. Revision petition as well as attempt before the High Court to get the charge under Section 302 framed was rejected. Thereafter, some evidence was led and Daljit Singh (respondent herein) again made an attempt by filing an application with a prayer to commit the case to the court of Sessions which was dismissed on 07.09.2013. Against which revision petition also remained unsuccessful. In the meantime, application under Section 294 Cr.P.C was filed for leading additional evidence by producing and proving statement of accused No.11 in a separate case in evidence. The aforesaid application was allowed and the additional evidence was permitted to be led. Once again Daljit Singh filed an application for committing the case to the court of Sessions on the ground that offence under Section 302 is *prima facie* made out. However, it was rejected by the learned Magistrate on 13.03.2014 which was again affirmed by the High Court vide order dated 11.02.2019 Annexure P-15. While dismissing the

petition, High Court in the previous round observed as under:-

“The petitioner's evidence is going on. In case, after recording petitioner's witnesses and defence version, the trial Court comes to the conclusion that there is a prima facie evidence for committal of the case to Court of Sessions, in that eventuality, the trial Court is at liberty to do the same, but prior to that stage, it is premature to say that any of the private respondents had any intention to kill the grandson of the petitioner.”

Thereafter, prosecution as well as defence concluded their evidence.

Learned Judicial Magistrate Ist Class noticed that as per MLR the deceased has suffered following injuries:-

- (1) *1½ cm X 1½ cm lacerated wound with singed margins was present 5 cm below the tragus of right ear. On dissection underlying vessels were ruptured. Massive heamatoma was present. This wound on probing was communicating with lacerated wound 2½ cm X 2½ cm on the left side of neck 6 cm below the left ear. Margins are singed and everted.*
- (2) *A lacerated wound 1½ cm X 1 ½ cm on the back of the left side 1 cm below the left scapula. The margins were inverted and signed. On dissection, the wound communicates with a lacerated wound measuring 3 cm X 3 cm with singed everted margins on the front of left side of the chest 1 cm below the lateral third of clavical and covering anterior fold of axilla. Underlying bones were fractured.*
- (3) *A lacerated wound 1½ cm X 1½ cm with inverted signed margins on the back of left forearm 2 ½ cm above the left wrist joint. This wound communicated*

with the 2 ½ cm X 2 ½ cm wound on the planter aspect of forearm. The margins were everted, singed. Underlying bones were fractured.

- (4) *A lacerated wound 1½ cm X 1½ cm on the left shoulder 3 cm below the left acromion process. The margins were everted, singed. This wound communicates with the another wound 2½ cm X 2½ cm on the anterior aspect of left shoulder joint. The margins of this wound were everted with singed margin.*
- (5) *An abrasion 3 cm X 2 ½ cm on the left side of the hip joint. (6) An abrasion 4 cm X 2 cm on the left side of the left knee joint.*

Upper part of the left lung was ruptured .”

After examining the entire evidence, the Magistrate formed an opinion that this is a fit case for committing the case to the Court of Sessions in exercise of powers under Section 323 Cr.P.C.

Before proceeding further, it will be appropriate to Extract Section 323 Cr.P.C.:-

Section 323 *Procedure when, after Commencement of inquiry or trial, Magistrate finds case should be committed:- If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.*

On the plain reading of Section 323 Cr.P.C., it is apparent that a Magistrate at any stage of the proceedings before signing the judgment, if forms an opinion that the case is one which ought to be tried by the court of Sessions, he shall commit it to that court. The significant words are “at any

stage of the proceedings before signing the judgment”. Thus, the Magistrate has the power to pass order as required under Section 323 Cr.P.C. at any stage before signing the judgment. The order passed by the Magistrate has already been unsuccessfully challenged by the petitioners before the Court of Sessions. That is how the petition under Section 482 has been filed challenging the order passed by the Magistrate affirmed by the court of Sessions in revision.

This court has heard learned counsels for the parties at length and with their able assistance gone through the paper book.

Learned senior counsel appearing for the petitioners submitted that once in the previous attempts, the Magistrate had rejected the request of Daljit Singh to commit the case to the Court of Sessions and aforesaid order had been upheld by the High Court, thereafter, Magistrate was not correct in passing the order of committal. He further submitted that no fresh material has been placed on file and therefore, the Magistrate committed an error while passing the impugned order.

On the other hand, learned counsel for the respondent-complainant has supported the order passed, while extensively reading operative part of order passed by Judicial Magistrate Ist Class dated 13.03.2019. He further submitted that present petition is also barred as second revision is not maintainable in view of bar under sub section 3 of Section 397 Cr.P.C.

Before this court deals with the facts of the case, it would be appropriate to notice that the Code of Criminal Procedure makes a provision similar to Article 20 of the Constitution of India. Article 20(2) provides that no person shall be prosecuted and punished for the same

offence more than once. Article 20 is extracted as under:-

“20. Protection in respect of conviction for offences:

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself.”

It is apparent from reading of Article 20 of the Constitution of India that the bar to second prosecution is applicable only when a person has been prosecuted and punished for the same offence earlier also. The words “prosecuted and punished” are to be read conjunctively and not disjunctively. This rule is known as “doctrine of double jeopardy” in service law. The doctrine of double jeopardy follows the old common law principle of “autrefois convict”. The principle is also found in maxim *'nemo debet bis vexari, si constat curice quod sit pro una iti eadem causa.'*

The aforesaid principle found recognition in Section 26 of General Clauses Act, 1897. Section 403 (1) of the Code of Criminal Procedure, 1898 also recognized this principle. Code of Criminal Procedure 1973 makes a similar provision under Section 300 Cr.P.C., taking a clue from “doctrine of double jeopardy”, as provided under Article 20 of the Constitution of India. However, Section 300 Cr.P.C., bars the trial for the same offence not only of a person who has been once convicted but also acquitted. In other words, under Section 300 Cr.P.C any person once convicted or acquitted shall not be liable to be tried again for the same

offence. Thus, the principles of “autrefois convict” and “autrefois acquit” are applicable.

However, this bar is applicable only when a person has been convicted or acquitted. Attention of the court has not been drawn to any other provision providing for imposing a bar on the power of the Magistrate to pass order of committal under Section 323 Cr.P.C., once previous applications have been rejected. Rather language of Section 323 Cr.P.C. makes it abundantly clear that the Magistrate is duty bound to commit the case to the court of Sessions, once he forms an opinion at any stage of the proceedings before signing the judgment that the case is one which ought to be tried by the Courts of Sessions. In other words, it has been made mandatory for the Magistrate to commit the case to the Court of Sessions once the Magistrate forms an opinion that the case is one which ought to have been tried by the Court of sessions.

This court is not further intentionally deliberating on the evidence or material available, lest it may cause prejudice to any of the party. Hence, the present petition is disposed of with liberty to the petitioners to make their submissions or contest their case at an appropriate stage.

14th November, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No