

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

CRR No.4804 of 2017 (O&M)

Reserved on: 05.02.2019

Date of decision: 06.02.2019

Baldev Singh

....Petitioner

Versus

Malkiat Singh

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aminder Singh, Advocate
for the petitioner.

Mr. H.C. Arora, Advocate
for the respondent.

ARVIND SINGH SANGWAN J.

CRM No.41236 of 2017

Prayer in this application is for condonation of delay of
150 days in filing the revision petition.

Heard.

For the reasons stated in the application, the same is
allowed and the delay of 150 days in filing the revision petition is
condoned.

CRR No.4804 of 2017

Prayer in this revision petition is for setting-aside the order
and the charge-sheet dated 22.05.2017 passed by the Additional

Sessions Judge, Sangrur vide which charges under Sections 326-A and 326-B of the Indian Penal Code (in short 'IPC') were framed against the petitioner.

Brief facts of the case are that the respondent/complainant had filed a complaint under Sections 326-A and 326-B IPC *inter alia* on the ground that the respondent/complainant is working with the petitioner as a Driver/Conductor on his truck in July, 2011. On 22.07.2011, the petitioner called him to settle his account and take his due amount. When the complainant reached the house of the petitioner at about 08:30 PM, to get his salary and knocked the door, the accused did not open the door and asked him to wait outside the house. After some time, the accused had gone at the roof of the house and poured acid on body of the complainant with an intention to kill him. The complainant raised alarm to save his life and in the meantime, his father – Sarabjit Singh and one Hardial Singh came at the spot and took the complainant to Civil Hospital, Dhuri and thereafter, he was referred to Rajindera Hospital, Patiala on 22.07.2011 and he remained under treatment there for some days. Thereafter, he was referred to PGIMER, Chandigarh but he was not admitted there as the doctor opined that there is no chance of his survival and thereafter, he was taken to Gian Sagar College and Hospital, Banur where the complainant remained admitted for a period of 01 year and he is still under treatment. It is further stated in the complaint that on account of the acid burn injuries, he has become 100% handicapped of Visual Impairment as per the opinion of the Civil Surgeon dated 06.08.2013.

The complaint was instituted on 19.11.2013 as the

complainant was under treatment. Thereafter, the petitioner/accused was summoned by the trial Court and vide impugned order dated 22.05.2017, the trial Court/Additional Sessions Judge, Sangrur has framed the charge under Sections 326-A and 326-B IPC against the petitioner.

The only argument raised by counsel for the petitioner is that the offence pertains to 22.07.2011 whereas the Government of India has amended the Indian Penal Code vide Criminal Law (Amendment) Act, 2013 i.e. Act No.13 of 2013 and it was published in the Official Gazette on 02.04.2013 and is made effective from 03.02.2013. By this Amendment, Sections 326-A and 326-B have been added in the Indian Penal Code providing more stringent punishment and make the offences triable by the Court of Sessions as the punishment is upto 10 years. Counsel for the petitioner has, thus, argued that the Amendment has come about 02 years after the date of alleged occurrence and merely because the complaint was filed on 19.11.2013 i.e. after the Amendment came into effect on 03.02.2013, the charges under Sections 326-A and 326-B IPC cannot be framed as the amended provisions has no retrospective application *qua* an offence which was committed on 22.07.2011.

Counsel for the petitioner has relied upon the Gazette Notification (Annexure P2) to submit that nothing has been provided in the Criminal Law (Amendment) Act, 2013 i.e. Act No.13 of 2013 that the amended provisions in the Indian Penal Code will have either retrospective effect or will apply to the pending criminal trial where the offence was committed prior to coming into existence of the

Amendment Act w.e.f. 03.02.2013.

It is, thus, submitted that framing of the charge under Sections 326-A and 326-B IPC is illegal and impugned order is liable to be set-aside.

In reply, counsel for the respondent/complainant has submitted that the delay in filing the complaint was on account of the fact that the complainant is continuously under treatment and he remained admitted in the hospital for a period of more than 01 year and has further submitted that since the complaint was filed after coming into force of the Amendment w.e.f. 03.02.2013, the trial Court has rightly framed the charge under Sections 326-A and 326-B IPC against the petitioner.

After hearing the counsel for the parties, I find merit in the submissions made by counsel for the petitioner that merely by filing a complaint subsequent to the amendment *qua* the offence, which was committed much prior to the date of amendment, the Court cannot frame charge under Sections 326-A and 326-B IPC, based on the allegations in the complaint, wherein it has been specifically stated that the petitioner had thrown acid on the complainant with an intention to kill him, the trial Court could have alternatively framed the charge under Section 307 IPC.

In view of what has been discussed hereinabove, the revision petition is ***allowed***, the impugned order dated 22.05.2017 is set-aside and the trial Court is directed to pass afresh order framing charge against the petitioner, in accordance with law, after considering the allegations raised in the complaint and other evidence, which is

available on record.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

06.02.2019
yakub

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