

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

CRM-M-3172-2017 (O&M)
Date of decision: 26.02.2020

Kuldeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Pratham Sethi, Advocate for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Ms. Sonia, Advocate for
Mr. A.S. Bhatti, Advocate for respondent No.2.

H.S. MADAAN, J. (Oral)

Briefly stated facts of the case as per prosecution version are that criminal machinery was set into motion by complainant Kuldeep Singh who in his statement got recorded with ASI Tarsem Lal stated that on 08.09.2055, at about 10.30 PM, he along with his wife had retired to bed, after midnight at about 12.15 AM on account of their air conditioner and fan having stopped working, he came to the courtyard of his house for checking the inverter battery. When he bent down to check the wires of inverter then a person gave blow to him from reverse side of gandasi hitting on his back. When he tried to get up, two more persons having muffled faces and wearing black clothes came from the side of their kitchen. They were armed with dah and they threw him on the floor. One

person gave dah blow on his right palm and he raised noise. Hearing that, his wife Narinder Kaur made a telephonic call to Baljinder Singh, Manjit Singh and Bhupinder Singh, their neighbours. In the meanwhile, Laddi and Ravinderpal Singh, living in their neighbourhood came to their house after crossing the boundary wall. His wife switched on the main switch and opened the main gate of their house. Then Baljinder Singh, Manjit Singh and Bhupinder Singh came to their house. When those persons tried to rescue him then third intruder gave two dah blows to him from reverse side hitting him on his right arm and chest. They had a scuffle with him during the course of which, scarves from the faces of two intruders got removed and he identified them to be Ranjit Singh and Bablu; regarding third intruder, he stated that he could identify if he will come in front of him. Then all the intruders ran away along with their respective weapons. According to the complainant, those persons had entered his house with intention to commit theft after killing him and his family members and had caused injuries to him with an intention to kill him. He was removed to civil hospital for medical treatment, where he was medically treated and medico-legally examined. Formal FIR for offences under Sections 459, 324, 323 and 34 IPC was registered at Police Station Dakha, Ludhiana. On the basis of said statement of complainant, accused Ranjit Singh was arrested in this case, whereas, Karun Kumar @ Bablu was though nominated as one of the intruders but he could not be arrested and was declared as a proclaimed offender.

After completion of investigation and other formalities, the

challan against the accused was filed in the Court of Judicial Magistrate Ist Class, Ludhiana who supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. and then finding that offence under Section 459 IPC was exclusively triable by the Court of Sessions, vide detailed commitment order dated 26.07.2016, committed the case to the Court of Sessions, which was assigned to Addl. Sessions Judge, Ludhiana.

When the case was put up before him, he observed that prima facie offence under Section 452 IPC was disclosed against the accused and not offence under Section 459 IPC, therefore, he remanded the case to Chief Judicial Magistrate, Ludhiana with a direction to proceed further in accordance with law. The relevant part of his order runs as under:-

“A bare perusal of Section 459 IPC, makes it crystal clear that for satisfying the essential ingredients of this section, grievous hurt is required to be caused while committing lurking house-trespass or house-breaking. However, in the case in hand, the prosecution itself alleging that Kuldeep Singh and Baljinder Singh came present before ASI Tarsem Lal on 09.09.2015 and produced MLR No.PSV/SWL/129/15 dated 09.09.2015, wherein, 04 simple injuries were mentioned. No grievous hurt/injury was found on the person of complainant and as such, offence U/s 459 IPC is not made out against the accused. Rather, the accused can be tried for the offence U/s 452 IPC, which is triable by Magistrate. With these observations and without commenting on the merits of the case, the instant case file, is hereby remanded to the Court of learned Chief Judicial

Magistrate, Ludhiana, for 18.10.2016 with direction to proceed with the case in accordance with law. The accused is directed to appear before learned Chief Judicial Magistrate, Ludhiana, along with his counsel on the date fixed as 9.30 AM sharp. Concerned Public Prosecutor also be intimated in this regard. Ahlmad is directed to send the record, complete in all respects, of this case to the said Court well before the date fixed.”

Feeling aggrieved, the complainant has approached this Court by way of filing the present petition.

I have heard learned counsel for the parties besides going through the record.

A perusal of the impugned order goes to show that learned Addl. Sessions Judge, Ludhiana has not properly appreciated the legal position. He had read only a part of Section 459 IPC and not gone through it completely. A complete perusal of the provisions goes to show that such offence is made out even if grievous hurt is not caused while committing lurking house trespass or house breaking and if an attempt to cause death or grievous hurt to any person is made during the course of committing lurking house trespass. Therefore, Ld. Addl. Sessions Judge, Ludhiana appears to have come to wrong conclusion that offence under Section 459 IPC is not made out. This has definitely resulted in miscarriage of justice. Therefore, the order is not sustainable; the same is set aside and the matter is remanded to learned Addl. Sessions Judge, Ludhiana with a direction to hear both the parties on the point of framing

of charge again and then proceed further in accordance with law, by passing a detailed speaking order. The parties through their counsel are directed to appear there on 26.03.2020.

26.02.2020

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No