

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

228

**CRM-M-36829-2021 (O&M)
Decided on : 01.11.2021**

Gurcharan Singh

. . . Petitioner

Versus

State of Haryana

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL
(Through Video Conferencing)**

PRESENT: Ms. Avin Kaur Sandhu, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Ashit Malik, Advocate
for the complainant.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the impugned order dated 17.08.2021 (Annexure P-3) and dated 30.07.2019 (Annexure P-4) passed by the Sessions Judge, Kurukshetra and the JMIC, Kurukshetra respectively, wherein an application was moved in FIR No. 315 dated 08.08.2017 registered under section 365 IPC by the petitioner for sending the case file to the Sessions Court to be tried with the trial of FIR No. 328 dated 19.06.2017 at Police Station, Pehowa, District Kurukshetra and the said application has been dismissed and the revision therefrom also has been dismissed.

Brief facts which give rise to the present petition are that Satnam Singh had got FIR No. 328 dated 19.06.2017 (Annexure P-1)

registered at Police Station Pehowa, District Kurukshetra against the present petitioner Gurcharan Singh alleging that on 17.06.2017, at about 2:30 PM, he was working on his land which was taken on lease and in the meantime, the petitioner Gurcharan Singh while driving his tractor Farm-Tech of blue color came in the fields and threatened the complainant that he will teach him a lesson for having taken land of Sukhwinder Singh on lease and forcibly started making partition and when the complainant tried to stop him then, the petitioner-Gurcharan Singh took out his *kulhari* from the tractor and hit the complainant on the head with an intention to kill him. The FIR was initially registered under Section 323 and 506 IPC and subsequently, the offence under section 307 IPC was also added and the said case has been committed and charges were framed and the entire evidence of the prosecution has been led and even the statement under section 313 Cr.P.C. has been recorded and the said case is stated to be fixed for final arguments for 02.11.2021. Another FIR No. 315 dated 08.08.2017 was registered by the present petitioner Gurcharan Singh @ Sheetal under Section 365 IPC at Police Station Kurukshetra University, District Kurukshetra. As per the said FIR, the incident occurred on 17.05.2017 and even, reference was made to the FIR No. 328 dated 19.06.2017 and it was alleged that after the release of the petitioner in the earlier incident, the petitioner at about 3 PM (i.e. after the incident which was the basis for registration of the FIR No. 328 dated 19.06.2017) was going on his motorcycle and when he reached near Raj palace, Pehowa near Narkatari Kurukshetra, then Harit Singh, Bhagwant Singh and four other persons, who the petitioner could not identify at that time, had put

their car in front of the motorcycle of the petitioner and after giving him fist blows and leg kicks, snatched the mobile and the motorcycle of the petitioner and tied his hands and legs with his turban and brought him to the house of Satnam Singh and then locked him in a room; and then abused him Taking 3:00 PM as the time of the alleged occurrence, the FIR was registered only under Section 365 IPC. The said case is stated to be at the initial stage inasmuch as no prosecution witness has been examined as yet. The petitioner had moved an application for sending the case file of FIR No. 315 dated 08.08.2017 to the Sessions Court for trial along with the trial of FIR No. 328 dated 19.06.2017. The Judicial Magistrate 1st Class, Kurukshetra vide the impugned order dated 30.07.2019 (Annexure P-4) dismissed the said application. The relevant portion of the said order is reproduced hereinbelow:-

"4. I have heard the arguments advanced by both the counsels and perused the case file very carefully. Perusal of the report under Section 173 Cr.P.C. reveals that the proceedings in the present case were initiated on the basis of the application dated 17.07.2017 filed by the complainant. Perusal of the application/complaint reveals that the complainant mentioned therein the entire occurrence starting from 17.06.2017 as narrated in the present application. On the basis of this complaint, investigation was carried out and accordingly the present case has been registered against the accused facing trial. Though learned Counsel for the complainant argued that the present case is the cross version of the case of the accused (complainant in FIR No.328 dated 19.06.2017) wherein he alleged that the present complainant had assaulted him, yet, perusal of the report under Section 173 Cr.P.C. reveals that the investigation in the present case has been carried out regarding

the allegation that at about 3:00 P.M. when the complainant was riding on his motorcycle to the hospital, he was abducted and later on assaulted by the accused. The initial occurrence on 17.06.2017 regarding which FIR No.328 dated 19.06.2017 is already registered at Police Station Pehowa has no connection with the allegation of abduction and assault made in the present complaint. Moreover, there was sufficient cooling time between the two occurrences and the place of occurrence is also different. Thus, it cannot be said that the present case is the cross version of FIR No.328 dated 17.06.2017 as asserted in the application. Therefore, the application stands dismissed."

A perusal of the above would show that it was observed that the contention of the petitioner, to the effect that FIR No. 315 was a cross version of the FIR No. 328, was rejected after perusing the report under Section 173 Cr.P.C. in FIR No. 315, in which the investigation has been carried out with respect to the incident that occurred at 3 PM, when the petitioner/complainant therein was abducted and later on assaulted and it was further observed by the JMIC that the incident regarding the initial assault as alleged in FIR No. 328 and the subsequent abduction in FIR No. 315 were separate incidents and the place of occurrence was also different. The revision petition filed against the said order has also been dismissed by primarily observing that it cannot be said that both the occurrences were part of the same incident since they have taken place at different places at different times. Reference was also been made to the judgement of the Hon'ble Supreme Court in **Jagannath Choudhary and anr Vs. Ramayan Singh and others, AIR 2002 SC 2229**, while considering the principles

on the basis of which revisional jurisdiction is to be exercised. Aggrieved against the said order, the present petition has been preferred.

Learned counsel for the petitioner has submitted that a perusal of both the FIRs would show that the same relates to version and cross version of the same incident. It has been pointed out that if the initial version as mentioned in the FIR No. 328 is taken into consideration, then it is apparent that the said initial incident is of 17.06.2017 occurring at about 2:00 PM in village Bhor Saidan wherein the dispute is stated to be between the petitioner Gurcharan Singh and complainant-Satnam Singh and has argued that when the said allegations in FIR No. 315 dated 08.08.2017 are compared with the ones in FIR No. 328 dated 19.06.2017 wherein allegations are also with respect to incident occurring on 17.06.2017 and is stated to have taken place at 02:30 PM in which also the petitioner Gurcharan Singh and Satnam Singh were involved, it would be a case of version and cross version and the above stated two cases should be heard on the same dates by the same Sessions Judge so as to avoid conflicting judgements.

On the other hand, learned counsel for complainant-Satnam Singh and the Ld. State counsel has argued that in fact the FIR number 315 dated 08.08.2017 has been registered under Section 365 on the basis of an alleged incident which had taken place at 3:00 PM at Raj palace, Pehowa near Narkatari Kurukshetra wherein the allegation is with respect to kidnapping. It is submitted that the incident in both FIRs

is separate and the following factors have been highlighted to substantiate the same:-

(i) the complainant in FIR No. 328 is Satnam Singh.

Satnam Singh has not been shown as an accused in FIR No. 315 and in fact, Bhagwan Singh and Harit Singh have been shown as accused;

(ii) the incident in FIR No. 328 is stated to be within the jurisdiction of Police Station Pehowa, whereas the incident which had taken place with respect to FIR No. 315 is near Raj Palace, Pehowa which is within the jurisdiction of Police Station Kurukshetra University;

iii) the incident in FIR No. 328 is with respect to the injury caused to Satnam Singh by the petitioner-Gurcharan Singh by a kulhari and in the said FIR, Section 307 has been added since the injury is stated to be dangerous to life. The incident as per the prosecution version in FIR No. 315 is with respect to the kidnapping of the petitioner Gurcharan Singh by Harit Singh and Bhagwant Singh and four unknown persons;

(iv) the offences as alleged to have been committed as per FIR No. 328 are triable by Sessions Court whereas the offences as per the allegations in FIR No. 315 are triable by Judicial Magistrate 1st Class.

Learned counsel for complainant-Satnam Singh has further submitted that in the present case, the orders passed by the Courts below are perfectly valid and do not call for any interference. It is argued that under Section 482 Cr.P.C., this Court is to exercise jurisdiction only if there is any grave error of jurisdiction committed by the Courts below. It is also submitted that as far as the FIR No. 328 is concerned, the trial is at the fag end and is fixed for arguments on 02.11.2021, whereas FIR No. 315 dated 08.08.2017 is still at its initial stage and not even a single prosecution witness has been examined in the same and in case FIR No. 315 is ordered to be heard along with FIR No. 328, then it would result in the stay of the proceedings of FIR No. 328 for a long time and would, thus, cause prejudice to the complainant who has been pursuing the said FIR No. 328 diligently.

This Court has heard the learned counsel for the parties and has perused the paperbook. It is not in dispute that in FIR No. 328 dated 19.06.2017, challan has been presented, charges have been framed, all the prosecution witnesses have been examined and the statement under Section 313 Cr.P.C. has also been recorded and the case is listed for final arguments on 02.11.2021. The said case is being tried by the Sessions Judge, Kurukshetra. On the other hand, FIR No. 315 dated 08.08.2017 is at an initial stage and in the said case, not even a single prosecution witness has been examined and thus, it would take a long time before the trial in the said case would conclude, thus, any order passed with respect to the pronouncement of both the judgements in

both the trials on the same day would lead to an inordinate delay in the decision in FIR No. 328 which is fixed for final arguments. The offences which are to be tried in both the FIRs are in different Courts i.e. trial of FIR No. 328 is before the Sessions Court and the trial of FIR No. 315 is before the trial court. A perusal of the two FIRs as well as the premise on which the prosecution is proceeding in the same would bring out the following distinguishing features:

(i) the complainant in FIR No. 328 is Satnam Singh.

Satnam Singh has not been shown as an accused in FIR No. 315 and in fact, Bhagwan Singh and Harit Singh have been shown as accused;

(ii) the incident in FIR No. 328 is stated to be within the jurisdiction of Police Station Pehowa, whereas the incident which had taken place with respect to FIR No. 315 is near Raj Palace, Pehowa which is within the jurisdiction of Police Station Kurukshetra University;

iii) the incident in FIR No. 328 is with respect to the injury caused to Satnam Singh by the petitioner-Gurcharan Singh by a kulhari and in the said FIR, Section 307 has been added since the injury is stated to be dangerous to life. The incident as per the prosecution version in FIR No. 315 is with respect to the kidnapping of the petitioner Gurcharan Singh by Harit Singh and Bhagwant Singh and four unknown persons;

(iv) the offences as alleged to have been committed as per the allegations in FIR No. 328 are triable by Sessions Court whereas the offences as per the allegations in FIR No. 315 are triable by Judicial Magistrate 1st Class.

Thus, the above said factors would show that the trial in FIR No. 328 is with respect to the incident which took place at 2:30 PM in which the petitioner had allegedly given a kulhari blow on the head of Satnam Singh whereas the trial in FIR No. 315 is with respect to the incident which took place at 3 PM when the petitioner Gurcharan Singh was kidnapped by Harit Singh and Bhagwant Singh and four other unidentified persons. Both the Judicial Magistrate 1st Class, Kurukshetra as well as the Sessions Judge, Kurukshetra vide the impugned judgments dated 30.07.2019 and 17.08.2021 respectively, have found that the said two incidents are separate incidents and this Court in exercise of its powers under Section 482 Cr.P.C. does not consider that the said orders suffer from any material irregularity or illegality so as to interfere and set aside the said orders. The arguments of the learned counsel for the petitioner to the effect that in the initial part of the FIR No. 315, the facts as stated seem to be a cross version of the incident which forms the basis of FIR No. 328 sounds attractive at first blush but when considered minutely along with the entire record including the basis on which the prosecution is proceeding in FIR No. 315 as also the report under Section 173 Cr.P.C. filed in the same, it becomes apparent

that it is the incident occurring at 3:00 PM, of kidnapping and beating, which is under trial with respect to the FIR No. 315.

Keeping in view the abovesaid facts and circumstances and also the fact that trial in FIR No. 328 is at the fag end and in FIR No. 315, not even one prosecution witnesses has been examined, this Court does not deem it appropriate to interfere in the present matter and the impugned orders dated 17.08.2021 and 30.07.2019 are thus, upheld and the present petition is dismissed.

(VIKAS BAHL)
JUDGE

1st November, 2021

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No