

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

CRM-A-978-MA-2015
Reserved on: 27.09.2022
Date of decision: 30.09.2022

HARJINDER SINGH

...Appellant

Versus

KARNAIL SINGH AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. B.D. Sharma, Advocate
for applicant.

Mr. J.S. Ghumman, Advocate
for the respondents.

SURESHWAR THAKUR, J.

CRM-19475-2015

The instant application has been filed under Section 5 of Limitation Act for seeking condonation of delay of 45 days in filing the present application seeking leave to appeal against the verdict of acquittal made by the learned Judicial Magistrate Ist Class, Phillaur, in respect of charges drawn under Sections 326/324/34 of IPC.

For good, and, valid reasons recorded in the application, the same is allowed, and, the delay of 45 days in filing the present appeal is condoned.

CRM-A-978-MA-2015

1. The facts relevant for a decision of the instant application, are that, the complainant Harjinder Singh instituted a private complaint before the learned Judicial Magistrate Ist Class, Phillaur. In the said private complaint he

alleged that offences constituted under Sections 324, 326, 34 of IPC, became committed by the therein named accused.

2. The brief facts of the present complaint are that on 4.6.2009 at about 10 AM, when the complainant was present at his well, then Karnail Singh son of Mehanga Singh armed with Kirpan, Iqbal Singh son of Karnail Singh armed with Dattar and Gejo wife of Karnail Singh armed with Danda came for assaulting him. On theirs reaching there Iqbal Singh raised Lalkara that complainant has not to be spared, upon which Karnail Singh struck a kirpan blow on the complainant but the complainant raised his right hand in order to save himself, but the kirpan blow struck his right hand. Subsequently, Karnail Singh gave a Kirpan blow on his shoulder, thereafter Iqbal Singh struck two datar blows on the left shoulder and left muscles of the complainant, whereafter Gejo is alleged to deliver danda blows on the left hand of the complainant. The complainant raised raula to the effect "Bachao-Bachao", "Mar-ditta, Mar-ditta", and upon hearing the raula raised by the complainant, Dharampal son of Jagdish Chand resident of Mahal and Major Singh son of Nirmal Singh resident of Goraya, reached the spot, and then the accused ran away from the spot with their respective weapons. Subsequently the complainant was medically examined and x-rayed in the Hospital. The motive behind the occurrence, is stated to be, that a case with regard to the ancestral property is pending between complainant and Karnail Singh, and for the said reason the accused persons have caused injuries to the complainant. It is also stated that the complainant also got recorded a statement before the police, on 5.6.2009, on the basis of which F.I.R bearing No.70 dt. 5.6.2009 U/S 324/34 IPC was registered, and on x-report, an offence u/S 326 IPC was added. It is alleged that the police has not taken any action against the accused persons despite theirs repeatedly visiting the Police Station.

3. As preliminary evidence the complainant examined himself as CW1, Dr.Malkiat Singh as CW2, PHG Sham Lal as CW3, Major Singh as CW4, Dharampal as CW5, and Dr. Kuljasbir Singh as CW6, and thereafter the complainant closed his preliminary evidence.

4. After considering the preliminary evidence adduced by the complainant, all the accused were vide order dated 17.08.2013 ordered to be summoned to face trial for offences under Sections 324/326 read with section 34 of the IPC.

5. After hearing both the parties a prima facie case was made out against the accused for theirs committing offences Under Sections 326/324/34 IPC. Accordingly charge(s) were framed against the accused, to which they did not plead guilty and claimed trial. Thereafter the case was fixed for adduction of post charge(s) evidence by the complainant.

6. The learned Magistrate concerned, upon, considering the fact that subsequent to the framing of charge(s) against the accused, and, despite an opportunity being granted to the complainant to adduce evidence thereons, yet rather no evidence becoming adduced by the complainant, therefore he proceeded to close the complainant's evidence. Moreover, the learned Magistrate concerned, in the operative portion of his impugned verdict, also proceeded to make an order of acquittal qua the accused in respect of the offences (supra), as became embodied in the private complaint.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPLICANT

7. The learned counsel appearing for the aggrieved-complainant, has submitted before this Court, that since the offences constituted in the complaint, were both cognizable as well as non-bailable offences. Thus he submits that the complaint offences were to be tried as a warrants case. He further submits that

since after the recording of preliminary evidence, upon the private complaint, the learned trial Magistrate concerned, made a summoning order upon the accused, besides thereafters, but after framing of charges he put the charges to the accused. However, he submits that since the accused did not plead guilty to the charges rather claimed trial. Consequently, he submits that the mandate of sub-Section 4 of Section 246 of the Cr.P.C., rather became attracted. Resultantly, he submits that in terms of sub-Section 4 of Section 246 of Cr.P.C., the accused were required to state, on the date subsequent to the drawing of charges against them, whether they wish to cross-examine, any of the witnesses who have at the pre-charge stage hence recorded their testifications before the learned trial Magistrate concerned, and which had led to the framing of charges against them. Consequently, he submits that since the above statutory obligation, as cast, upon the Magistrate concerned, has not been complied with, resultantly he submits that the impugned order of acquittal as made by the learned Magistrate concerned, requires an interference.

ANALYSIS OF THE PROVISIONS OF SECTION 246 OF Cr.P.C.

8. For making an appropriate analysis of the provisions carried in Section 246 of Cr.P.C., it is deemed imperative to extract them. Therefore, the provisions of Section 246 of Cr.P.C., become extracted hereinafter.

“246. Procedure where accused is not discharged.(1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under subsection (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.”

9. Admittedly the relevant offences were carried in a private complaint as became instituted before the learned Magistrate concerned. Thus the apposite private complaint enjoined the learned Magistrate concerned, to recourse the mandate carried in Section 200 of the Cr.P.C. Necessarily, before the making a summoning order, the learned trial Magistrate concerned, was required to ensure that the complainant adduces preliminary evidence hence containing incriminatory echoings against the accused. The incriminatory preliminary evidence adduced at the pre-charge stage, would become the foundation for the making of a valid order qua the drawings of charge(s) against the accused, as, named in the private complaint.

10. Though, the pre-charge preliminary evidences adduced by the complainant in respect of the offences constituted in the complaint, did lead, to an order framing the relevant charge(s) becoming drawn on 22.01.2015. However, a reading of the apposite order framing charge(s) against the accused, also discloses, that the accused did not plead guilty to the charge(s), and, rather

they claimed trial. Moreover, an incisive reading of the order drawn on 22.01.2015 also makes emergences of the relevant fact, that the private complaint became listed on 27.01.2015, for adduction of the complainant's evidence, upon, the charges (supra), as became drawn against the accused. However, on the subsequent dates, the complainant did not adduce evidence in respect of the charges, hence leading to the impugned order of acquittal being made qua the accused named in the private complaint. It is the above order of acquittal which has been challenged before this Court.

11. Though, after the framing of charge(s) against the accused, on 22.01.2015, did result in the mandate carried in sub-Section 2 of Section 246 of Cr.P.C., becoming attracted. Emphatically also when then the accused were required to immediately state their wish to cross-examine the preliminary evidence which became recorded at the pre-charge stage. Subsequently, the learned Magistrate concerned, was enjoined to, after making an objective consideration thereof, hence record reasons qua the stated wish of the accused to at the post charge stage, rather cross-examine the preliminary evidence becoming forthwith allowed. However, the mandate of sub-Section 4 of Section 246 of Cr.P.C., has remained uncomplied with.

THE EFFECT OF ABOVE NON-COMPLIANCE OF THE PROVISIONS OF SECTION 246(4) OF Cr.P.C., BY THE ACCUSED AT THE POST CHARGE STAGE

12. Be that as it may, the effect of compliance to the mandate carried in sub-Section 4 of Section 246 of Cr.P.C., rather being not meted, hence post the drawing of charges against the accused, and, to which they pleaded not guilty, and, claimed trial, yet does not have any fatal consequence, upon, the impugned verdict of acquittal. The reason for drawing the above conclusion, flows from the statutory requirement as carried in sub-Section 4 of Section 246 of Cr.P.C.,

becoming required to be complied with rather by the accused, and, that too through a written expression being made immediately post the order framing charges against the accused. However, post the drawing of charges against the accused they did not express before the learned trial Magistrate concerned, hence their wish to cross-examine the preliminary evidence, as became adduced at the pre-charge stage nor also any objective consideration was thereons made by the learned Magistrate concerned, qua the above expressed wish of the accused becoming for recorded reasons rather forthwith allowed. Contrarily, in the order framing charges, as became drawn on 22.01.2015, the learned Magistrate concerned, rather ordered the complainant to adduce evidence in support of the charge(s). Though, the salutary purpose behind the engraftment of sub-Section 4 in Section 246 of Cr.P.C., is to ensure speedy and expeditious trial of the complaint, as the testifications of the complainant's witnesses, as became recorded at the pre-charge stage, are but deemed or do obviously embody only their respective examinations-in-chief. Thus, at the above stage the apposite completest testimony(ies) as also comprised in their respective cross-examinations hence are not then recorded. Therefore, since at the post charge stage the said preliminary evidence as becomes adduced at the pre-charge stage, does not enclose the completest testimony(ies) of the witnesses concerned, rather the pre-charge stage recorded testifications of the complainant witnesses, thus only embody their respective examinations-in-chief, and but for gauging their respective truth, rather requires that each of the complainant's witnesses are necessarily put to cross-examination(s). The cross-examination(s) of the preliminary evidence, is but obviously to test the veracity of the complainant's witnesses who have at the pre-charge stage, echoed in their respective examinations-in-chief, an incriminatory role against the accused. Importantly,

also in other words, unless the complainant asks for adducing post charge stage evidence, in addition to the evidence adduced at the pre-charge stage, the veracity of the pre-charge evidence, is required to be tested only through cross-examinations being made upon the witnesses concerned, but only with the leave of the Court, being granted within the ambit of sub-Section 4 of Section 246 of Cr.P.C.

PURPOSE OF SUB-SECTION 4 OF SECTION 246 OF Cr.P.C.

13. If the purpose of sub-Section 4 of Section 246 of Cr.P.C., is to ensure a speedy trial of the complaint case, yet an incisive reading thereof, makes it abundantly clear, that the statutory privilege (supra) is but reserved exclusively qua the accused. Resultantly, for want of derivings by the accused of the benefits of sub-Section 4 of Section 246 of Cr.P.C., rather the complainant cannot draw any leverage. If so, the non-availment of sub-Section 4 of Section 246 of Cr.P.C., by the accused, did not yet relieve the complainant, to adduce evidence in support of the charges as became drawn against the accused, through an order made on 22.01.2015. However, the complainant did not lead evidence to support the charges despite an opportunity being granted for the afore purpose. If he had done so, then only an opportunity would hence have arisen qua the accused cross-examining the post charge adduced evidence by the complainant. Necessarily, since the complainant did not adduce the post charge evidence. Thus he obviously also forbade the accused to impeach the credit of the witnesses who but never stepped into the witness box, post the drawings of charge(s) against the accused. Moreover also the want of adduction of evidence by the complainant, and that too post, the drawing of charges against the accused, does work adversely qua the complainant, and, not against the accused.

Moreover, when at the post charge stage, no express wish was conveyed by the

accused to the learned Magistrate concerned, to re-call the preliminary evidence for hence cross-examinations being made upon the same. Thus, when the above statutory privilege became not availed, resultantly it is deemed to have been waived or abandoned by the accused. The reason being that the pre-charge adduced preliminary evidence, became the foundation for the framing of charges against the accused, but did not become the foundation for the drawings of any valid verdict of conviction against the accused, in respect of such drawn charges, as become anchored upon preliminary evidence. Emphasizingly when the veracity of the pre-charge adduced preliminary evidence, as in the instant case, remained rather untested through cross-examinations being not made, given the non-availment by the accused qua the statutory privilege cast, in sub-Section 4 of Section 246 of Cr.P.C., nor obviously when the complainant's witnesses who stepped into the witness box at the pre-charge stage, never stepped into the witness box at the post charge stage, for theirs making themselves available for theirs becoming cross-examined by the accused. Resultantly, it was but for the complainant to support the charges, not through earlier adduced preliminary evidence, but through his adducing post charge evidence.

CONCLUSION

14. As above stated when the Magistrate concerned, enters upon a trial of a complaint case, he becomes enjoined to ensure that the complainant adduces preliminary evidence to support the makings of a valid summoning upon the accused. Therefore, the preliminary evidence alike a report under Section 173 of Cr.P.C., as becomes drawn by the investigating officer concerned, in respect of a police case, rather becomes the sheet anchor hence for valid assumptions of jurisdictions, besides for valid assumptions of cognizances by

the jurisdictionally empowered Court, besides becomes the bedrock for framing charges against the accused. Conspicuously, it does not become the foundation for the drawing either a verdict of conviction or a verdict of acquittal, unless the veracity of the pre-charge adduced preliminary evidence, becomes tested through the accused availing the mandate of sub-Section 4 of Section 246 of Cr.P.C. However, for reasons (supra), since the above mandate of sub-Section 4 of Section 246 of Cr.P.C., became abandoned or waived by the accused, but has a natural corollary, that when the relevant benefit is statutorily conferred only upon the accused. Therefore, it was amenable for being waived only by the accused. Thus when it has been waived by the accused, resultantly the complainant was required to adduce post charge evidence to support the charge(s). Since he has not done so despite the granting of an opportunity. Resultantly, the closure of the complainant's evidence besides the verdict of acquittal becomes well merited.

SUMMARIZATION OF PRINCIPLES

- I. Pre-charge evidence becomes the foundation for the drawing of charge(s). If the accused does not plead guilty to the charge(s) which are drawn against him/them, and, claims trial, thereupon the accused may choose to test the veracity of the pre-charge adduced evidence, through his availing the benefit of sub-Section 4 of Section 246 of the Cr.P.C.
- II. However, the above statutory privilege is conferred only upon the accused, and in case it is waived or abandoned, resultantly the complainant cannot draw any benefit from such waiver or abandonment. Contrarily, the complainant is yet required to be

adducing post charge evidence to support the charge(s) drawn against the accused.

III. The preliminary evidence becomes the foundation, only for the drawings of charge(s), but does not become foundation for either any verdict of acquittal or a conviction being made, unless the veracity of the pre-charge evidence is tested through cross-examinations. If the pre-charge evidence remains untested through cross-examinations, despite the relevant opportunity hence at the post charge stage, being granted to the complainant, by the learned Court concerned. Resultantly the learned Court concerned, may after closing the apposite granted opportunity to the complainant to adduce post charge evidence, may proceed to draw a verdict of acquittal in respect of the complaint.

15. Therefore, there is no merit in the petition, and, the same is dismissed. The impugned order of acquittal as made by learned Judicial Magistrate Ist Class, Phillaur, on 31.01.2015, is affirmed and maintained.

(SURESHWAR THAKUR)
JUDGE

30.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>