

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

CRM-M-8325-2020 (O&M)
Date of decision: 26.04.2022

Ram Babu Aggarwal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Through the present petition, the petitioner seeks quashing of the order dated 01.02.2020 passed by the learned Additional Sessions Judge, Hisar, vide which the revision petition filed by respondents No. 2 and 3 was allowed and the order dated 29.04.2019 passed by the learned Judicial Magistrate 1st Class, Hisar, was set aside.

Learned counsel for the petitioner submits that while passing the impugned order, the learned Additional Sessions Judge, Hisar, did not take into consideration the testimony of PW3 – Krishan, clerk and PW4 - Jitender Gupta, a commission agent, who are the eye witnesses to the occurrence. He has read over the statements of the said witnesses during the course of hearing, which are on record as Annexure P-7(Colly).

I have heard the learned counsel for the petitioner and have also gone through the paper-book.

The Revisional Court while taking into consideration the statements of both the witnesses (PW-3 and PW-4) has drawn a conclusion that no offence under Section 452 IPC is made out, as the occurrence took place in the gallery and not in the Chambers. It has also

been taken in to consideration that both the witnesses stated that though the accused had entered the Chambers, yet the occurrence had taken place in the gallery. Para 5 of the order of the Revisional Court, reads as under:-

“5. *Ex.P-1 is the complaint given by Shri Ram Babu Aggarwal, Advocate against the revisionists in which he specifically raised the allegations against the revisionists that they forcibly entered in his chamber and gave beatings to him. The allegations of the complainant were investigated by the police, but no offence under Section 452 of IPC was made out. As such, the police did not challan under Section 452 of IPC against the revisionists. The police prepared site plan in the report which shows that the occurrence took place in the gallery. The arguments on charge in the learned trial Court were heard on 07.08.2018 and the prosecution pressed the learned trial Court to frame charge under Section 452 of IPC. The order dated 07.08.2018 passed by the trial Court clearly reveals that the learned trial Court did not frame charge under Section 452 of IPC against the revisionists stating therein that the perusal of the challan and complaint shows that the occurrence alleged by the complainant had happened in the gallery and as such offence under Section 452 of IPC was not made out. Thereafter, the complainant appeared in the witness box as PW-1 and he reiterated the contents of the complaint Ex.P-1. Vipin, son of the complainant, appeared in the witness box as PW-2 and also deposed on the concurrent lines of PW-1. Krishan, who is working as Clerk, appeared in the witness box as PW-3. He stated in examination-in-chief that the alleged assault was committed by the revisionists upon the complainant in the gallery. Likewise, PW-4 Jitender Gupta in his cross-examination that the alleged occurrence took place in gallery. It is evident that no fresh evidence was led by the prosecution so as to make out a case of criminal trespass in property against the revisionists to frame charge under Section 452 of IPC. The allegations of the complainant leveled against the revisionists are same which are contained in his complaint Ex.P-1 and same has already been investigated by the police. At the time of framing of charge, the learned trial Court had already refused to frame charge under Section 452 of IPC stating therein that as per challan, the incident took place in gallery. Thereafter, there is no such evidence led by the prosecution on the basis of which charge under Section 216 of Cr.P.C. could be amended. The Honourable Supreme Court of India held in State of Maharashtra versus Salman Salim Khan and another, 2004(1) R.C.R. (Criminal), 314 that it is open to trial court to alter the charge at any stage of trial depending on the material that is brought before it in the form of evidence. It is very much evident that some material should be brought before the Court in the shape of evidence so as to enable the Court to frame charge or to alter the charge against the accused under Section 216 of Cr.P.C. In the present case, no new material has been brought by the prosecution in the trial and charge under Section 452 of Cr.P.C. has been wrongly framed by the learned trial Court on the basis of statement of*

complainant which was available previously also when the Court had refused to frame charge under Section 452 of IPC. Moreover, the learned trial Court ignored the testimony of PW-3 Krishan, who is working as Clerk as an independent witness, who stated that the incident took place in the gallery. Thus, the order dated 29.04.2019 passed by the learned trial Court vide which the charge under Section 452 of IPC has been framed against the revisionists is erroneous and liable to be set aside.”

Section 452 IPC is attracted only when a trespass is done in a house. However, in the instant case, as noticed above, the occurrence took place in the gallery and thus, there was no occasion for the trial Court to frame charge under Section 452 IPC.

Learned counsel for the petitioner could not point out any infirmity in the findings recorded by the Revisional Court.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

26.04.2022

Mangal Singh

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No