

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

CRM-M-13635-2022 (O&M)
Date of Decision:- 7.4.2022

Ashok Kumar and others ... Petitioners

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Shekhar Verma, Advocate for the petitioners.

GURVINDER SINGH GILL, J.

1. The petitioners assail order dated 8.3.2022 (Annexure P-7) vide which the trial Court has ordered for framing of charges against the petitioners for offences under Section 323 read with Section 34 IPC and under Section 325 read with Section 34 IPC.
2. A few facts necessary to notice for disposal of the petition are that the instant case is a cross-version lodged by way of a complaint dated 31.5.2017 instituted by respondent no. 2 – Dharam Raj against the petitioners and three others whereas one FIR had been lodged at the instance of Ashok Kumar (petitioner No.1) against the private respondents in respect of the same occurrence dated 19.12.2016. While in the FIR i.e. FIR No. 246 dated 20.12.2016, Police Station Babain, District Kurukshetra under Sections 323, 324, 325, 326, 307, 504, 506, 148, 149 IPC, lodged by petitioner No. 1 against private respondents, the allegations are broadly to the effect that the private respondents had caused injuries to them and had made an attempt to murder them, the allegations in the complaint (Annexure P-3) filed by

respondent No. 2 – Dharam Raj are to the effect that the petitioners and others had made a murderous assault on them. Trial in respect of the FIR has been proceeding before the Court of Additional Sessions Judge, Kurukshetra wherein charges have been framed against the private respondents and a large number of prosecution witnesses have been recorded ever since. However, the proceedings arising out of private complaint filed by Dharam Raj against the petitioners is at nascent stage wherein the same has been committed to the Court of Sessions vide order dated 25.1.2022 (Annexure P-6) and thereafter charges have been framed against the petitioners vide impugned order dated 8.3.2022.

3. The learned counsel for the petitioners has submitted that filing of the complaint is an absolute misuse of process of law and that even if it is accepted that some of the private respondents had sustained some injuries, a comparison of the injuries sustained by private respondents and the injuries sustained by the petitioners would show that injury, if any, on the person of the private respondents could have been caused in self-defence, given the fact that it is not only a lesser number of injuries which have been sustained by the private respondents but the nature of injuries is also not such which could furnish any reason to call the petitioners as aggressors.
4. The learned counsel for the petitioners has further submitted that the impugned order has been passed in a mechanical manner and that there is nothing on record to show that all the petitioners had shared any common intention to cause injuries to the private respondents inasmuch as the occurrence in question had taken place at the residence of the petitioners where the private respondents had come with a pre-meditated plan to cause

injuries to petitioners. The learned counsel, in order to hammer forth his aforesaid submissions places reliance upon a judgment of Hon'ble Supreme Court reported as (2022) 2 SCC 545 – Jasdeep Singh @ Jassu versus State of Punjab wherein it has been held that since Section 34 IPC creates a deeming fiction, the onus in respect of same is on the prosecution to prove common intention to the satisfaction of the Court. It has been submitted that since such satisfaction is absolutely missing in the present case, there was no occasion to frame charges against the accused on the premises of their vicarious liability.

5. The learned counsel also relies upon a judgment of Hon'ble Supreme Court rendered in (2003) 9 SCC 426 - State of Madhya Pradesh versus Mishri Lal wherein it was observed that in a case where police files challan against both the parties, it goes without saying that one of the version must be false and that in such a situation, an obligation is cast upon the investigating officer to make an endeavour to find out the truth.
6. It has further been submitted that since the FIR case is at its fag end, the complaint case which is a cross-version would result in delaying the conclusion of trial arising out of FIR and that it is for this very purpose of prolonging the agony of petitioners that a false complaint has been filed. The learned counsel has, thus, prayed for setting aside the impugned order dated 8.3.2022 (Annexure P-7).
7. I have considered the aforesaid submissions and have also perused the petition as well as the documents annexed with the petition.
8. Since it is a case where both the sides have sustained injuries, it is apposite to first of all refer to the injuries sustained by members of both the parties.

The said injuries as have been mentioned in Para 11 of the petition and are reproduced hereinunder :-

FIR No. 246 of 20.12.2016 - Sessions Case No 198 of 2017 State Vs Amit Kumar and Ors.		
Sr. No.	Name of the Victims	Type of injury and weapon used
1.	Sh. Raghbir aged about 70 years	A lacerated wound of 3 cm x 0.5 cm on frontal upper parietal region with fresh bleeding (Weapon used sugarcane cutter)
2.	Smt. Raksha Devi aged about 60 years	C/o lacerated wound of 3 cm x 0.5 cm in right thumb base with fresh bleeding C/o Abrasion Left occipital region (Weapon used Iron rod)
3.	Smt. Banto aged about 60 years	C/o Swelling/pain below left eye C/o abrasion/pain left shoulder-joint (Weapon used Lathi/Wooden Stick)
4.	Sh. Maya Ram aged about 54 years	A lacerated wound of 3 cm X 0.5 on middle of upper frontal region A lacerated wound of 2 cm X 0.5 on occipital region (Weapon used Gandasi)
5.	Sh. Anil Kumar aged about 36 years	C/o pain in left hand in middle finger and ring finger C/o pain on left shoulder joint (Weapon used Iron rod)
6.	Sh. Ashok Kumar aged about 34 years	A lacerated wound of 2 cm x 0.5 cm elbow joint with irregular margin with fresh bleeding C/o Pain in upper dental region C/o abrasion in right hand little finger (Weapon used Cane Peeling Sickle)

Complaint No. 26/2017 Dharam Raj Vs Raghbir Singh and Ors.		
Sr. No.	Name of the Victims	Type of injury
1.	Amit Kumar	Pain/swelling in the right forearm abrasion right forearm, swelling/pain on left leg, abrasion lower abdomen Fracture in the left hand

2.	Daya Nand	Abrasion and pain in middle and index finger, pain on right leg
3.	Dharam Raj	Abrasion above right eyebrow, right leg, below knee and pain on right knee joint
4.	Jagindro Devi	A lacerated wound of 2 cm X 0.5 left on right side of forehead with fresh bleeding

9. A perusal of the aforesaid details of injuries sustained by both the sides would certainly show that more number of persons have been injured on the side of the petitioners i.e. six whereas it is only four persons who have been injured on the side of the private respondents. However, it needs to be noticed that one of the injury sustained on the side of the private respondents i.e. on Amit Kumar was found to be fracture. While the petitioners claim that the occurrence had taken place in their house, the private respondents allege that the occurrence had taken place on a public road. The truthfulness of either of the versions can only be established after evidence is led by both the parties. It is a case where the petitioners had collectively caused injuries to private respondents at the same time with weapons after way-laying them on road. A common intention to cause injuries can safely be gathered in these circumstances as there is no other explanation for receipt of injuries by private respondents at the same time at the hands of petitioners unless of course, the petitioners are able to show that the same was caused in self-defence but the said fact regarding self-defence can only be ascertained during the course of trial. As far as the judgment relied upon on behalf of the petitioners i.e. Jasdeep Singh's case (*Supra*) is concerned, there is certainly no dispute as regards the ratio of the said judgment but a perusal of the said judgment itself would show that it has been held therein that it is

from the facts of each case that the common intention has to be gathered and is an aspect which is required to be looked into by the Court on the basis of evidence placed before it. Para 27 of the said judgment reads as follows :-

“27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.”

10. In this context, a reference may also be made to a judgment rendered by a three Judges Bench of Hon’ble Supreme Court in (2020)10 SCC 517, Subed Ali And Others vs. State of Assam wherein while discussing the broad principles as regards vicarious liability, it has been held as follows :-

“13. Common intention consists of several persons acting in unison to achieve a common purpose, though their roles may be different. The role may be active or passive is irrelevant, once common intention is established. There can hardly be any direct evidence of common intention. It is more a matter of inference to be drawn from the facts and circumstances of a case based on the cumulative assessment of the nature of evidence available against the participants. The foundation for conviction on the basis of common

intention is based on the principle of vicarious responsibility by which a person is held to be answerable for the acts of others with whom he shared the common intention. The presence of the mental element or the intention to commit the act if cogently established is sufficient for conviction, without actual participation in the assault. It is therefore not necessary that before a person is convicted on the ground of common intention, he must be actively involved in the physical activity of assault. If the nature of evidence displays a pre-arranged plan and acting in concert pursuant to the plan, common intention can be inferred. A common intention to bring about a particular result may also develop on the spot as between a number of persons deducible from the facts and circumstances of a particular case. The coming together of the accused to the place of occurrence, some or all of whom may be armed, the manner of assault, the active or passive role played by the accused, are but only some of the materials for drawing inferences”

11. As already stated above, in the present case, the petitioners were allegedly armed with weapons like ‘Balam’, ‘Berma’, Iron rods, ‘Lathis’ and ‘Bindas’ etc. and had waylaid the private respondents and had used abusive language and caused injuries to them together the same time. None of the petitioners had tried to dissuade any other of them from causing injuries. Such like manner of causing injuries would certainly constrain one to think that the injuries have been caused pursuant to a concert and meeting of mind amongst the accused. No doubt, the accused can always repel such kind of allegation or assumption but that would be only at the stage of trial either by demolishing the statements of the prosecution witness or by leading defence.
12. As far as the judgment in State of Madhya Pradesh versus Mishri Lal case (supra) is concerned, it needs to be mentioned that the present case is not a case of cross-challan filed by the police out of the same FIR but is a case of

an FIR and a cross-complaint. In any case, even in Mishri Lal's judgment, it is basically the procedure to be adopted in cross-cases which has been discussed and the principles pertaining to trying of cross-cases as delineated in Nathilal Vs. State of U.P. 1990 (Supp.) SCC 145 have been reiterated.

Hon'ble the Supreme Court in Nathilal's case (supra) held as follows :-

‘We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.’

13. A rationale behind trial of cross-cases together by the same Judge is obviously to avoid conflicting findings in respect of the same incident. In Mishri Lal's case, there is nothing to show that any fault has been found with in the procedure laid down in Nathilal's case as regards trial of cross-cases. As such, both the cases having arisen from the same occurrence had to be tried together. Though, the learned counsel has pointed out that the complaint has been committed to the Court of Sessions belatedly but the same cannot lead to an inference that false allegations have been levelled therein or that the accused deserve any kind of benefit on account of such delay. The petitioners otherwise are on bail

14. Though, it can be said that the order framing charges is not a very detailed order but at the same time, the order framing charges is not to be passed while discussing threadbare all the evidence that has been collected during the course of investigation or during the course of preliminary evidence. The impugned order is in accordance with the summoning order and the preliminary evidence led by respondent No. 2/complainant. This Court does not find any infirmity in the same and the same is upheld.
15. Finding no merit in the petition, the same is hereby dismissed.
16. Needless to mention, the trial Court will take necessary steps for ensuring that there is no inordinate delay in conclusion of the proceedings of the complaint and that the complainant leads his evidence at the earliest.

7.4.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No