

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

(1)

**CRM-M No.17543 of 2016
Date of Decision: 11.11.2022**

Balbir Chand and others

.....Petitioners.

Versus

State of Punjab and another

.....Respondents.

(2)

CRR No.2476 of 2016 (O&M)

Balbir Chand and others

.....Petitioners.

Versus

State of Punjab

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. C.M. Munjal, Advocate
for the petitioners in both the petitions.

Mr. Kunwarbir Singh, AAG, Punjab
for respondent No.1-State in CRM-M No.17543 of 2016 and
for the respondent-State in CRR No.2476 of 2016.

Mr. J.S. Grewal, Advocate
for respondent No.2-complainant-informant
in CRM-M No.17543 of 2016.

MEENAKSHI I. MEHTA, J.

Both these petitions are being taken up together for discussion
and adjudication as these have arisen out of the same criminal case as
registered against the petitioners at Police Station Sadar Fazilka, District

Ferozepur, vide the FIR bearing No.373 dated 29.10.2008 under Sections 307, 452, 427, 323, 380, 148, 149 IPC and Sections 25 & 27 of the Arms Act, with the allegations that on 28.10.2008, the informant-injured named Bishan Singh, along-with his wife Jeet Kaur and their sons Gurdev Singh and Gurmeh Singh, had gone to the house of his another son named Bant Singh on the occasion of Diwali festival and then, all the seventeen (17) petitioners (in CRR No. 2476 of 2016) and their two co-accused namely Maiya Ram and Karam Chand (these co-accused are stated to have since expired), who were armed with weapons like gun, *Gandasi*, pistol etc, entered into the house of his son (Bant Singh) and caused injuries to him (informant) as well as to his son Gurdev Singh, daughter-in-law Raj Kaur and nephew Bhajan Singh and they also pelted stones and batted bricks towards them, resulting in the damage to the articles lying in the house and on seeing the villagers gathering there, they fled away from the spot.

2. Bereft of unnecessary details, the facts culminating in the filing of the present petitions, are that during the investigation, the offence under Section 307 IPC was dropped in the case in view of the report qua the inquiry as conducted by the Deputy Superintendent of Police, Fazilka and thereafter, the Challan/Final Police Report under Section 173 Cr.PC was submitted in the Court under Sections 452, 323, 427, 380, 148 & 149 IPC and Sections 25 & 27 of the Arms Act.

3. Then, the prosecuting agency moved an application before the trial Court with a prayer to commit the case to the Court of Sessions, while averring that the offence under Section 307 IPC was also made out against

the accused in this case. However, the trial Court, vide the order dated 17.05.2010 (Annexure P-2), dismissed the said application and the criminal revision, preferred by the informant-injured to challenge the afore-said order, was also dismissed by the Revisional Court (Additional Sessions Judge, Ferozepur) vide order dated 06.07.2013 (Annexure P-4). The informant, then, filed a criminal complaint case against the petitioners-accused with the allegations of their having committed the offences as detailed in the Challan as well as under Section 307 IPC but the Judicial Magistrate 1st Class, Fazilka, dismissed the same vide order dated 21.12.2013 (Annexure P-3) and the criminal revision, as filed by the informant to assail the above-said order, was disposed of by the Revisional Court, while remanding the case to the concerned Court with the direction to proceed further therein as per the provisions contained in Section 210 Cr.P.C.

4. In the meantime, Judicial Magistrate 1st Class, vide the order dated 06.09.2012, framed the charges (Charge-Sheet annexed as P-5) against the petitioners under Sections 452, 427, 323, 380, 148 and 149 IPC and proceeded to record the statements of the prosecution witnesses (copies thereof annexed as P-6 to P-11). Then, the prosecuting agency moved an application under Sections 209/216 Cr.PC with the prayer to invoke the offence under Section 307 IPC, in the present case and to commit the same to the Sessions Court which has been allowed by the concerned Court vide order dated 16.11.2015 (annexed as P-12) and the criminal revision, as filed by the petitioners-accused to lay challenge to the said

order, has also been dismissed by the Revisional Court vide order dated 11.04.2016 (annexed as P-13). Both these orders, i.e Annexures P-12 and P-13, have been impugned by the petitioners in **CRM-M No.17543 of 2016**.

5. It is worth-while to mention here that subsequently, learned Additional Sessions Judge, Fazilka, passed an order on 25.05.2016 for framing the charges against the petitioners under Sections 307, 323, 452, 427, 380, 148 & 149 IPC and Section 27 of the Arms Act and in pursuance thereof, the charges were framed and the said order has been challenged by the petitioners-accused by filing **CRR No.2476 of 2016**.

6. I have heard learned counsel for the petitioners as well as learned State counsel (assisted by learned counsel for respondent No.2-complainant-informant in **CRM-M No.17543 of 2016**) in both the instant petitions and have also perused the files carefully.

7. Learned counsel for the petitioners has contended that during the investigation, the offence under Section 307 IPC had been dropped in the present case on the basis of the inquiry conducted by the concerned Deputy Superintendent of Police who had reported that no such offence was found to have been committed by the petitioners and moreover, the application moved by the informant/prosecuting agency with a prayer to invoke the offence under Section 307 IPC in the case and to commit the same to the Court of Sessions had been dismissed by the Court vide order Annexure P-2 and the criminal revision preferred against the same had also been dismissed vide the order Annexure P-4 and therefore, the application,

moved by the prosecuting agency subsequently for adding the offence under Section 307 IPC in the case, as allowed vide the order Annexure P-12, was not maintainable and hence, the said order as well as order Annexure P-13 passed by the Revisional Court upholding the same, are erroneous and even otherwise, the entire version of the informant/prosecution qua the gun-shots having been fired during the alleged occurrence, seems to be highly improbable and in these circumstances, the orders (Annexures P-12 and P-13) impugned in CRM-M No.17543 of 2016 and also the order dated 25.05.2016, as assailed in CRR No.2476 of 2016, are not legally sustainable and are, therefore, liable to be set-aside/quashed.

8. Per contra, learned State counsel has argued that the prosecution witnesses as examined in the Court, have made categorical depositions regarding the use of the fire-arms in the crime and therefore, the offence under Section 307 IPC has rightly been added in this case as well as in the Charge-Sheet and it being so, both the instant petitions be dismissed.

9. As regards the contention qua the offence under Section 307 IPC having been dropped in the case on the basis of the afore-discussed inquiry report, the same does not hold much water because the deletion or addition of any offence in the case by the investigating agency cannot be construed to be the final verdict and rather, after the presentation of the Challan/Final Police Report, it is exclusively within the domain of the competent Court to ascertain/decide as to whether a particular offence is made out in the case or not.

10. So far as the contention regarding the above-said application, as initially moved by the informant/prosecuting agency for invoking the offence under Section 307 IPC, having been dismissed vide the order Annexure P-2 and the criminal revision, as filed for challenging this order, having been dismissed vide the order Annexure P-4, is concerned, the same is, again, not tenable because in the concluding para in the order Annexure P-4, the Revisional Court has made the following categoric observations:-

“10. Before parting with this judgment, it is needless to say that the trial court possesses the power to deal with the trial as per the evidence before it and can pass any such order reflected from the evidence to be recorded by the trial court. This order of dismissal of revision petition shall have no bearing on the trial to be conducted on merits.....”

11. The above-quoted observations speak volumes of the fact that the Revisional Court had left the scope open for the trial Court to deal with the trial of the case and to pass any order in the light of the evidence as might be led before it and in such circumstances, the orders Annexures P-2 & P-4, can, by no stretch of imagination, be considered to be a bar for the informant/prosecuting agency for moving the application whereupon the impugned order Annexure P-12 has been passed which has been upheld by the Revisional Court vide the impugned order Annexure P-13.

12. As regards the last contention qua the version put-forth by the informant/prosecution being highly improbable, the same can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage

after appreciating and evaluating the evidence that may be led on the record during the course of the trial and the same cannot be decided at the stage of the framing of the charges because it is well-settled that while framing the charge, the trial Court is supposed to only ascertain as to whether a prima-facie case is made out against the accused in view of the material available on the record and at that stage, the Court is not required/supposed to weigh or evaluate the said material from the point of view of determining/deciding as to whether the same would suffice to end in conviction or acquittal of the accused.

13. As a sequel to the fore-going discussion, it follows that the orders, as assailed in the instant petitions, do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant/call for any interference by this Court. Resultantly, both the petitions in hand, being *sans* any merit, stand dismissed accordingly.

November 11, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*