

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

**CRM-M No. 23352 of 2022
Date of Decision: 26.05.2022**

Neeku @ Sanjeev Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Gaurav Gupta, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner becomes aggrieved from the acceptance of the cancellation report, filed by the Investigating Officer, before the learned trial Magistrate concerned, qua FIR No. 0293 of 22.07.2018, registered at Police Station Old Faridabad, District Faridabad, constituting therein offences under Sections 323, 324, 326, 307, 452, 506 & 34 of the Indian Penal Code, 1860, despite, a valid protest against its acceptance being raised, before him, by the present petitioner. The above acceptance was made through an order carried in Annexure P-6. Consequently, he is led to, through the instant petition, cast a challenge thereon(s).

2. The present petitioner makes a grievance, that in the penal incident, which occurred on 25.05.2018, qua accused, Gulshan, Sunny, Geeta, Moolraj, and, Tek Chand, entering his house, and, thrashing him, and, causing injuries upon his person, with users' of axe, steel spade (kassi), iron rod, and, stick, as, respectively, became, wielded by each. He also has made averments in the petition, that no prompt action, upon, his motion to

the police agencies concerned, was taken, and, that only through his filing a

petition, under Section 156(3) of the Cr.P.C., before the learned trial Magistrate concerned, and, the latter ordering for registration of the petition FIR against the above accused, that the police machinery, became activated.

3. After conclusion of investigations into the petition FIR, the Investigating Officer (IO) concerned, proceeded to draw, and, also file a cancellation report, in respect of the petition FIR. The complainant also filed a protest against its acceptance, before the learned trial Magistrate concerned. As above stated, the cancellation report became accepted, by the learned trial Magistrate concerned, whereas, the objections against its acceptance, as, reared by the present petitioner, rather became dismissed.

4. Before proceeding to delve into the validity of the challenge , as, to the order drawn on 12.04.2022 (Annexure P-6), by the learned Magistrate concerned, it becomes necessary to bear in mind, the factum, that in respect of the incident carried in the petition FIR, also an FIR became lodged, at the instance of the accused, in the petition FIR, rather against the present petitioner. The learned trial Magistrate concerned, after assuming valid cognizance(s) and jurisdiction(s) thereons, proceeded to thereons make an order of conviction, upon, the present petitioner.

5. It appears, that during the course of a penal transaction, qua whereof, an FIR became lodged against the present petitioner, by the accused, in the petition FIR, rather the present petitioner also suffering injuries, as detailed in the protest petition filed, against the acceptance of the cancellation report, preferred by the IO, before the learned trial Magistrate concerned.

6. Therefore, since in a penal transaction common to the FIR, earlier to the petition FIR, and, obviously to the latter, the petitioner also suffered injuries, which he attributes to become entailed, upon his person, at the instance of the accused in the petition FIR, thereupon, prima facie, he, during the course of the trial, as, became entered, upon, by the learned trial Magistrate concerned, upon, the earlier to the petition FIR, he could permissibly save himself from inculpation, through his therein either propagating the right of private defence of body, or, his completely denying his causing or inflicting any injuries, upon, the victim-aggrieved in the earlier FIR concerned.

7. However, in the impugned order (Annexure P-6), the learned Magistrate concerned, has in paragraph-14 thereof, made a specific reference, to the present petitioner, who was the accused in the earlier FIR, rather not taking either of the above exculpatory pleas. Contrarily his raising a plea, that the entailment of injuries upon Geeta, was a sequel of hers, being accidentally struck with an axe, in sequel to the present petitioner, attempting to save himself from the attack, as, made upon him by Gulshan. The effect of the above non-taking(s) of permissible pleas in defence, before the learned trial Judge concerned, who had entered, upon, trial upon the earlier FIR, is that, prima facie, the attribution of inculpability by the present petitioner, to the accused in the petition FIR, rather being a sequel of concoction(s), and, pre-meditation(s). Furthermore, there is also reference in paragraph-9, of the impugned verdict (Annexure P-6), that the learned trial Judge concerned, had assigned credibility to the version of the victim, in the earlier FIR, qua the present petitioner suffering injuries not in

the manner carried in the petition FIR, rather his suffering injuries owing to his falling on the construction material occurring at the crime site. The above references, to the appreciation of evidence, as, done, by the learned trial Judge concerned, as became adduced, qua the earlier to the petition FIR, does obviously negate, the attribution of guilt, by the victim, qua the accused in the petition FIR, inasmuch as, theirs through user of axe causing injuries on his person. The reason for making the above conclusion, also spurs from the factum, that the above made appraisal of evidence, as, in referred paragraph-14 of the impugned verdict, prima facie, earmarks qua an objective appraisal of the adduced evidence, being done by the learned trial Judge concerned, and, as, became adduced qua the trial arising from the earlier to the petition FIR, and, it ultimately leading to a verdict of conviction being made upon the present petitioner. Therefore, the statements on oath, as, made by the PWs concerned, in the trial arising from the earlier to the petition FIR, and, also the appraisal thereof, by the learned trial Judge concerned, does prima facie, constrain this Court, to assign the conclusivity, and, finality, to it, unless, of course, the learned Appellate Court concerned, finds errors, and, discrepancies, in the manner of appreciation of the prosecution evidence, as, became adduced qua the charge drawn against the petitioner herein.

8. Even though, after filing of a cancellation report, by the IO concerned, in respect of the petition FIR, the aggrieved-victim (complainant), had strived to protest against its acceptance, and, had also a right to ask for a direction, being made to the IO, to carry further investigations, in the petition FIR, but prima facie, the permission qua

leading of preliminary evidence in support of the averments, as, carried in the objection petition, may not have been an appropriate course. The above permission, does negate the purpose of Section 178(8) of the Cr.P.C., conspicuously when upon, a police case, the above recouring is the befitting remedy, as, upon it being affirmatively accorded to the victim, the latter was to deliver the incriminatory evidence to the IO concerned, rather than preliminary evidence qua the present petitioner being permitted to become adduced, excepting in a private complaint where preliminary evidence, rather was permissible to be adduced.

9. However, even if in support of the averments carried, in the protest petition concerned, the complainant was permitted to examine his witnesses, but yet it has to be discerned, whether the appreciation of the adduced evidence, by the complainant, hence by the learned Magistrate concerned, is a fair and objective appraisal thereof.

10. In the above endeavour, the learned trial Judge concerned, has referred to the deposition of CW-1, the wife of the present petitioner, who had proceeded to, in her deposition, support the version qua the genesis of prosecution case, as, carried in the petition FIR. However, as aptly concluded, by the learned trial Magistrate concerned, her deposition was not worthy of credence, as, she had arrived at the crime site, only after the alleged thrashing being made upon the petitioner, rather by the accused in the petition FIR. Moreover, it has also been aptly concluded, that though she had purportedly attributed to one Gulshan, the role of his wielding an axe, and, also to one Naresh, inasmuch as, his holding steel spade, besides she attributed an incriminatory role to Sunny, inasmuch as, his holding an

iron rod, yet she had not deposed, that all the above were sighted by her to strike the accused, through, the above wielded weapon(s) of offence by each of them. Therefore, her deposition was aptly discarded.

11. Moreover, the learned trial Magistrate concerned, has also proceeded to dis-believe the testification of the wife of the complainant, on the ground, that though she had deposed that, she had seen her husband to be bleeding, but contrarily the MLR drawn with respect to the petitioner, rather not suggesting, that blood was oozing from the injuries, as, became entailed, upon, the present petitioner. In addition, if as a matter of fact, blood did ooze from the injuries entailed upon the present petitioner, in sequel, to his becoming assaulted by the above persons, with users' by each of the above wielded weapon(s) of offence, resultantly, the clothes worn at relevant time by the complainant would also have acquired stains of blood. However, the petitioner did not produce his blood stained clothes, either before the learned Magistrate concerned, before him he filed a petition under Section 156(3) of the Cr.P.C., nor he produced his blood stained clothes, before the IO concerned, whereas, the production of the above blood stained clothes, and, their matching by the expert with her blood sample, may have corroborated, the version of his wife, that with each of the above, hence, through users of incriminatory weapon(s) of offence, theirs causing injuries, upon, the person of the victim, and, her further version that the blood, as, had started oozing therefrom, did also stain the clothes which he was wearing, at the relevant time.

12. Be that as it may, as above stated, if the deposition of the wife of the present petitioner, is concluded to be not holding the apposite

evidentiary vigour, thereupon, the sole testimony of the injured victim, the petitioner herein, does not acquire any evidentiary force, as, for reasons above stated, he is completely estopped from canvassing, in his objection petition, hence all those pleas, which were raisable, by him, during the course of his being tried in the earlier to the petition FIR, and, which, as above stated, became never canvassed, by him. Contrarily, when the learned trial Judge concerned, in the verdict made upon the earlier to the petition FIR, and, as becomes referred in paragraph-14 of the impugned verdict, attributed the injuries, if any, suffered by the present petitioner, to be a sequel of his falling to crushing material. Therefore, the inculpable attributions as, made by the complainant against the petitioner, in the petition FIR, qua through each wielding weapon(s) of offence, theirs causing injuries, upon his person, rather become completely devoid of any iota of veracity.

13. The learned counsel for petitioner has with much vigour, submitted before this Court, that when the doctor concerned, who appeared as CW-3, before the learned Magistrate concerned, and, who had examined on the relevant date of occurrence, inasmuch as, on 25.05.2018, the present petitioner, making echoings in his deposition, that injury No. 1 as became observed, by him, to be occurring on the aggrieved-victim, rather being causable by axe. Therefore, the learned counsel for the petitioner argues, that the deposition of the complainant, and, or of his wife, qua each wielding weapon(s) of offence, and, with users' thereof theirs causing the injuries, detailed in the MLR, Ex. C2, both obviously become(s) supported by Ex. C2. However, even the above made submission cannot be concluded

to carry any efficacy, as, the learned Magistrate concerned, has made a conclusion, that CW-3 had not deposed, as, argued, by the learned counsel for the petitioner, but had merely not ruled out, the possibility of the injuries detailed in Ex. C-2 being causable, through user of axe or other incriminatory weapon(s) of offences, by the accused concerned. Even otherwise, if there is contradiction inter se medical evidence, and, or ocular evidence, thereupon preponderance is to be assigned to ocular evidence, and, not to medical evidence. Since, for reasons (supra), the ocular evidence, as voiced, by the injured witness / petitioner herein, and, by his wife, is completely infirm, thereupon, no leverage can be drawn, upon, the statement of CW-3, which otherwise is not completely suggestive of the relevant injuries, being imperatively causable by an axe, and, not by the petitioner falling on the crush material, rather, as, concluded by the learned trial Judge concerned, in a trial entered upon in an FIR other than the petition FIR.

14. Be that as it may, the learned counsel for the petitioner also argues, that CCTV footages, do comprise valid incriminatory evidence against the respondents concerned, but even the above argument fails, as the learned Magistrate concerned, after viewing the CCTV footages, has, in paragraph-16 unfolded, that the crime incident was not therein clearly visible, besides has made observations that there was not sightings, in the CCTV footage, as purportedly appertains to the relevant incident, as to who were the assailant(s), and, or, as to who was the victim.

15. In consequence, this Court finds no merit in the present petition, and, the same is hereby dismissed. The impugned verdict of

12.04.2022 (Annexure P-6), as, made by the learned trial Court, is maintained and affirmed.

May 26, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>