

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

**CRR-3186-2018 (O&M)
Date of Decision: 21.02.2022**

Manjeet Kaur

....Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Hakam Singh, Advocate.

Mr. Ramandeep Singh Sandhu, Sr.DAG., Punjab.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate for the respondent No.2.

Mr. P.S.Ahluwalia, Advocate for respondent No.3.

MANOJ BAJAJ, J.

The petitioner had filed this criminal revision petition to challenge the order dated 27.07.2018 passed by Additional Sessions Judge, Bathinda, refusing to alter the charge framed on 15.09.2017 against accused (respondent Nos.2 and 3), in case FIR No.233 dated 04.12.2016 under Sections 302, 336, 148 and 149 IPC and Sections 25 and 27 Arms Act, 1959, at Police Station Maur, District Bathinda.

The facts in brief leading to the petition are as under:-

The above FIR (Annexure P-1) was registered on the complaint given by Rajinder Singh son of Sukhdev Singh, husband of

Kulwinder Kaur (deceased) and the relevant extract of the same reads as under:-

“It is stated that I am resident of the address mentioned above. I and my wife Kulwinder Kaur @ Janu are performing in Cultural programmes. As per marriage programme booked by the owner of Punjab Musical Group, Mohinderpal Singh @ Manga son of Ashok Kumar resident of Sardulgarh, today I alongwith my wife Kulwinder Kaur @ Janu alongwith my mother-in-law Manjit Kaur wife of Baldev Singh, Mazhabi Sikh, resident of Malout alongwith three other girls reached Ashirvad Palace as per marriage programme of Varun Kumar son of Narinder Kumar. My wife Kulwinder Kaur @ Janu was performing dance on a song at the stage at about 11:00 PM and there was full arrangement of lights on stage and Billa who was in front of the stage was carrying 12 bore rifle in his hands alongwith another unknown person, who was also carrying revolver and they alongwith three other baraties were dancing whereas stage secretary Angrej Singh was on the stage. Billa fired with his 12 bore rifle and the shot hit the head of my wife Kulwinder Kaur @ Janu, who died on the spot. I and my mother-in-law Manjit Kaur and Secretary Angrej Singh raised an alarm on which Billa as well as unidentified person who was carrying revolver in his hand, and three other unidentified persons abusing each other ran away from the spot alongwith their weapons. As Billa and his companions were insisting to go on the stage with their respective weapons who were restrained by me and Stage Secretary Angrej Singh, therefore, he fired with his 12 bore rifle at my wife Kulwinder Kaur @ Janu on her head and murdered her on the spot.”

After registration of the above case, the investigation was carried out and during investigation, the offences punishable under Sections 302 and 336 IPC and Sections 25 and 27 Arms Act, 1959 were substituted with offences punishable under Section 304-A and 336 IPC

and Section 30 Arms Act, 1959.

Upon completion of investigation, the final report under Section 173 (2) Cr.P.C was filed on 07.03.2017 before Judicial Magistrate First Class, Talwandi Sabo, but before it could be considered, an application was moved on behalf of the Public Prosecutor for committal of the case to the Court of Sessions, as *prima facie*, the offence punishable under Section 304 IPC was made out. The said application was allowed by Magistrate vide order dated 03.07.2017 and the case was committed for Sessions trial.

Thereafter, on considering the final report as well as the arguments of the parties, learned Additional Sessions Judge, Bathinda vide his order dated 15.09.2017 (Annexure P-2) framed the charges against accused/respondent No.2, namely, Lucky Kumar @ Billa for alleged commission of the offence punishable under Sections 304 and 336 IPC, whereas respondent No.3, namely, Sanjay Goyal was charged for the alleged commission of offence punishable under Section 30 Arms Act, 1959.

During the pendency of the case, the complainant, namely, Rajinder Singh died and mother of the victim, namely, Manjeet Kaur wife of Baldev Singh (petitioner) preferred an application dated 07.03.2018 (Annexure P-9) for alteration of charge on the ground that the material on record indicated commission of offence punishable

under Section 302 IPC and Sections 25 and 27 Arms Act, 1959 apart from the offence under Section 336 IPC. It was pleaded in the application that though FIR was initially registered for the offence punishable under Section 302 IPC etc., but subsequently, the police reduced the charges as noticed above. According to the mother of victim, when her daughter was performing on the stage, the accused persons insisted to climb on the stage for dancing with the orchestra girls and as they were not permitted, the accused fired the gunshot upon her and caused her death. Lastly, it was pleaded that respondent No.2- Lucky Kumar @ Billa had applied for regular bail through CRM-M-31953-2017 before this Court and the said petition was dismissed vide order dated 23.01.2018 (Annexure P-8), however, liberty was granted to the complainant to move an application for alteration of charge, but the trial Court vide impugned order dated 27.07.2018 refused to amend the charge. Hence this revision petition.

Learned counsel for respondents have stated that during the pendency of this petition, Manjeet Kaur (petitioner) has also expired. At this stage, Mr. Hakam Singh, Advocate seeks leave of the Court, to assist without bringing on record the representatives of petitioner to avoid further delay, as the revisional jurisdiction under Section 397 Cr.P.C can be exercised even *suo moto* to ascertain the correctness and validity of any order passed by the trial Court. The prayer is not

opposed by learned counsel for the respondents.

Mr. Hakam Singh, Advocate has argued that from the very beginning a specific case was set up by the complainant as well as other eye witnesses, who were present at the place of occurrence, that the accused persons were armed with weapons and insisted to dance with Kulwinder Kaur, who was performing on stage with other orchestra girls at a marriage function being held on 03.12.2016 at Aashirwad Marriage Palace, Maur Mandi Bathinda, but as they were restrained by the stage secretary, therefore, respondent No.2 fired a gun shot which hit the victim causing her death on the spot. He further argued that apart from motive, the nature of injury as well as weapon used in crime, clearly indicate commission of offence punishable under Section 302 IPC. However, during the investigation, Somnath son of Parkash Chand, who is father of respondent No.2 and Vijay Goyal son of Relu Ram (father of respondent No.3) moved separate applications in January 2017 before the Superintendent of Police, Bathinda raising grievance against registration of FIR No.233 dated 04.12.2016 and claimed innocence of the accused, whereupon an enquiry was conducted and death of victim was described as accidental, and final reprot was filed under Sections 304-A, 336 IPC and Section 30 Arms Act, 1959 in order to favour the accused. According to him, the approach adopted by the trial Court while framing charges against

accused is extremely erroneous in law as it failed to apply its judicial mind to the facts, circumstances and material on record, and similarly the application filed by Manjeet Kaur for alteration of charge was also dismissed summarily without even considering the relevant material. He prays that the impugned order be set aside and the accused be charge-sheeted for the offences punishable under Sections 302 IPC and 336 IPC and Sections 25 and 30 Arms Act.

The prayer is opposed by Dr. Sidhu, learned Senior counsel appearing on behalf of the accused No.2, who argued that the alleged occurrence took place during the marriage function where the accused persons were amongst the guests, and the alleged act of firing by the accused-Lucky was not intentional, as he fired in the air, but as a result of jerk caused by weapon, the gunshot hit the victim. According to him, the necessary ingredient of intention on the part of accused to constitute the offence of murder defined under Section 300 IPC is missing, therefore, *prima facie*, no case for framing charge under Section 302 IPC would be made out. In support of his arguments, learned counsel has placed reliance upon “**Kunwar Pal Vs. State of Uttarakhand**”, 2014 (12) SCC 434 and **Bhagwan Singh Vs. State of Uttarakhand**”, 2020 (14) SCC 184. According to him, at best it is negligence on the part of the accused, therefore, the police rightly filed the final report for alleged commission of offences under Section 304-

A IPC etc. He has further argued that though final report under Section 173 (2) Cr.P.C was filed before the Court of Magistrate for the offence punishable under Section 304-A, but subsequently, upon an application moved by public prosecutor, the case was committed to the Court of Sessions, because it was pleaded by public prosecutor that the death of the victim is culpable homicide not amounting to murder, but the committal order 03.07.2017 was never challenged by complainant or any other eye witness. Learned senior counsel has highlighted that after committal of the case, the trial Court framed the charges against the accused on 15.09.2017, and the said order was also never challenged by the complainant, therefore, at this stage, the prayer for alteration of charge is not maintainable. He submits that the impugned order does not warrant any interference and prays for dismissal of revision petition.

Mr. P.S.Ahluwalia, Advocate representing the respondent No.3 has argued that the alleged firing is attributed to co-accused i.e respondent No.2 and respondent No.3 (Sanjay Goyal) has been implicated for the offence punishable under Section 30 Arms Act, 1959 as this weapon is owned by him.

Learned State counsel assisted by SI Jaspreet Kaur has argued that though the incident was recorded in a videography done at the time of wedding function, but after completion of investigation, the

final report was filed under Sections 304-A, 336 IPC and Section 30 Arms Act and the said report is based upon the inquiry of Superintendent of Police (Investigation) Bathinda. He has further argued that the trial Court has taken into consideration the material on record and the charges have been framed in accordance with law by considering the nature of offence. He submits that after framing of charges, the trial had commenced and one prosecution witness stood examined, when the application for alteration of charge was made. He submits that the application was not supported with any new circumstance or material for exercise of extra ordinary power under Section 216 Cr.P.C, therefore, the trial Court has rightly passed the order dated 27.07.2018.

During the course of hearing, it was conceded by learned counsel for the respondents that the final report under Section 173 (2) Cr.P.C is based upon conclusion of an inquiry report by Bikramjit Singh, PPS, the then Superintendent of Police (Investigation) Bathinda upon representation given on behalf of accused. Though the final report under Section 173 (2) Cr.P.C is not appended with the petition, however, learned counsel for the respondents has produced the copy of the same.

Learned counsel for the parties have been heard and with their assistance, the case file has been perused carefully.

Framing of charge against the accused in a sessions trial is dealt by Section 228 Cr.P.C and at this stage, the trial Court is not to evaluate the proposed prosecution evidence and other material on record to ascertain the guilt of the accused, as this exercise is only for the limited purpose to find out, if, the ingredients to constitute the alleged offence(s) exist and *prima facie* suggest involvement of accused in the commission of crime. At the same time, the trial Court is also not required to assess the probable defence of the accused to examine his or her innocence. By now, it is well settled law that the trial Court is not to act as a mouthpiece of prosecution while framing charges against accused, as suggested in the police report, but it must consider the broad probabilities of the case to form an opinion relating to the commission of crime by the accused. The scope of Section 228 Cr.P.C has been examined by Hon'ble Supreme Court in number of cases and in "*Sajjan Kumar Vs. Central Bureau of Investigation*" *2010 (4) R.C.R.(Criminal) 382.*, the apex Court made the following observations:-

"17) Exercise of jurisdiction under [Sections 227](#) & [228](#) of Cr.P.C.

On consideration of the authorities about the scope of [Section 227](#) and [228](#) of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under [Section 227](#) of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the

accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouth-piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of [Sections 227](#) and [228](#), the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

The above view was reiterated by Hon’ble Supreme Court in “**Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao**”, 2012 (4) R.C.R. (Criminal) 601.

Here it would be relevant to note that after initial framing of charges and commencement of the trial, if it appears to the trial Court that the original charge needs to be altered or any other charge is required to be added, it can do so at any stage, but before pronouncement of the final judgment. The enabling provision of Section 216 Cr.P.C relating to alteration of charge reads as under:-

216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

A bare perusal of the above provision indicates that the statute has conferred an extra ordinary power with the trial Court to either alter or amend the charge, framed earlier, at any stage before the pronouncement of final judgment. At the same time, the Court has to

be extremely careful while exercising jurisdiction under Section 216 Cr.P.C. and must ensure that there exists convincing material and the existing charge deserves to be modified. While exercising the power, the Court must also keep in mind the stage of the trial and other attending circumstances to assess that the alteration would not cause any prejudice to the accused.

Now turning to the facts of the case in hand and upon analysis, this Court finds that as per prosecution the accused persons were attending the wedding function at Ashirvad Marriage Palace, Bhatinda on 03.12.2016, where victim along with other orchestra girls was performing dance on a stage when accused-Lucky Kumar @ Billa took licensed weapon of Sanjay Goyal (co-accused) and fired a gunshot, which hit on the head of victim, who died on spot. Though initially, the FIR was registered for offences punishable under Sections 302, 336, 148 and 149 IPC, 1860 and Section 25 and 27 Arms Act, 1959, but during the investigation, the said offences were substituted with Sections 304-A, 336 IPC and Section 30 Arms Act. The examination of final report reveals that during investigation, the police had recovered the weapon of offence from the accused and as per postmortem report Kulwinder Kaur died of gunshot injury, however, after completion of investigation, the accused were sent to face trial for the offences punishable under Sections 304-A, 336 IPC and Section 30 Arms Act.

Further, the manner of investigation/inquiry in the subject FIR was noticed by this Court in the petition bearing No.CRM-M-31953-2017 filed by accused No.2 for regular bail and this Court had directed the officer to file his affidavit justifying the substitution of offences originally mentioned in the FIR. The affidavit dated 31.10.2017 filed along with inquiry report dated 31.01.2017 is Annexure P-6. As per its contents, the officer gave an explanation that gunshot fired by accused resulting in death of the victim was accidental caused by negligence, therefore, instead of offence punishable under Section 302 IPC, it would be case of offence punishable under Section 304-A IPC.

A close scrutiny of the affidavit and enquiry report shows that though it is mentioned by the officer that the accused fired a shot, but described the occurrence as accidental as if, the weapon went off accidentally without any act on the part of the accused, but concededly, the said conclusion drawn by the senior police officer stood overruled by public prosecutor, who had moved an application before the Judicial Magistrate First Class, Talwandi Sabo for committal of the case to the Court of Sessions as the death of the victim was culpable homicide not amounting to murder i.e. punishable under Section 304 IPC.

In the above backdrop, while analyzing the issue that if the facts of this case and material on record relating to the death of the

victim *prima facie* suggest commission of offences punishable under Sections 302, 336 IPC and Sections 25 and 27 Arms Act or whether the trial Court has rightly framed the charges under Sections 304, 336 IPC and Section 30 Arms Act, this Court finds that the trial Court was misdirected by the partisan stand of prosecution agency, and further it failed to apply judicial mind in recording satisfaction for the purposes of framing appropriate charges against the accused.

It is true that every murder is a culpable homicide, but every culpable homicide is not murder, as these two expressions defined under Sections 299 and 300 IPC, respectively, are separated by a thin distinction, and if, the trial Court ignores this distinction in the given facts of the case, it may result in miscarriage of justice. According to prosecution itself, the accused had fired the gunshot which hit the victim resulting in her death and undoubtedly this is culpable homicide and in order to test that this amounts to murder, the Court should determine, if, the act attributed to accused falls within the four clauses of Section 300 IPC, which reads as under:-

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is *murder, if the act by which the death is caused is done with the intention of causing death, or*
(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—
(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—
(Fourthly) —If the person committing the act knows that it is

so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

As per the final report, during investigation, the accused were arrested and pursuant to their disclosure, the weapons of offence were recovered and the said occurrence was incidentally videographed during the video recording of the wedding function and as per the inquiry, the gunshot which caused death of the victim was fired by the accused-Luky Kumar @ Billa. It is also the case of the prosecution that licence of weapon was in the name of co-accused-Sanjay Goyal, who was standing alongwith the accused-Lucky Kumar @ Billa and they both were surrounded by other guests, as well as artists and other team members who were on stage at a higher level. *Prima facie*, the firing by the accused was without any excuse, and was so imminently dangerous, that in all probabilities it carried a risk of causing death or such injury to other persons present there. As an exception to the other clauses, *clause fourthly* of Section 300 IPC is altogether different and does not contemplate intention of the accused as an essential ingredient to constitute the offence. Therefore, the argument of the learned senior counsel that as the accused fired the gunshot without intention to commit murder, and no offence punishable under Section 302 IPC would be made out, is not acceptable at this stage of framing of charges. The citations relied upon by the learned senior counsel are

also not applicable in the facts and circumstances of the present case as in those cases, the correctness of impugned judgment of conviction delivered against the appellant therein was under consideration, whereas in the present case, the Court is to examine the record of the case only for the purposes of framing of charges.

Unfortunately, the trial Court also proceeded to frame the charge against the accused in a mechanical manner by following the stand of the public prosecutor, who had already disowned the final report showing the death of victim as a result of negligence. Thus in this peculiar background, it was imperative for the trial Court to evaluate the material on record independently to form an opinion for framing charges.

The other argument raised by learned senior counsel that the complainant had neither challenged the order of committal dated 03.07.2017 nor the order framing of charges dated 15.09.2017, therefore, cannot seek alteration of the charge, at a stage when trial had just begun is also without any merit, as from the very beginning, the complainant and other prosecution witnesses had set up a specific case of murder against by the accused persons, and it is clear from the fact that initially the FIR was also registered for the offences punishable under Section 302 IPC. It may be noticed here that the complainant has levelled a specific allegation that as the accused were not permitted to

climb the stage, so in retaliation, the gunshot was fired at the wife of the complainant to cause her death. This part of the statement describes the act of the accused as intentional and further explains the motive.

The background of this case further shows that instead of carrying out a pragmatic and meaningful investigation in the crime, the Superintendent of Police, (Headquarters) being senior police officer of the State police department interfered in the investigation by illegally entertaining the representation on behalf of Somnath and Vijay Goyal, who claimed innocence of their respective sons, i.e. respondent Nos.2 and 3. Strangely, in the inquiry conducted upon the representation, the inquiry officer had associated ten witnesses, namely, Som Nath, Gody Kumar, Sandeep Singla, Amrinder Singh, Amar Singh, Vijay Kumar, Rajinder Mohan, Prem Kumar, Surinder Kumar and Bhame Shah, besides the complainant, but in the final report submitted by the Investigating Officer none of them except complainant has been shown as prosecution witnesses, in the list of fourteen witnesses, attached with the final report dated 07.03.2017.

At this juncture, this Court deems it necessary, to notice once again the trend adopted by senior police officers of state police department, who engage themselves in holding inquiries on the representations on behalf of the accused, to examine their innocence, after registration of FIR and during the pendency of the investigation,

and this practice is prevalent largely in the State of Punjab for a long time. Such inquiry reports by the inquiry officers based upon the defence of the accused are often delivered in their favour, and during this exercise, the inquiry officers illegally assume judicial role. Through this procedure, the accused persons make an attempt to dig a secret tunnel to create an escape route to avoid punishment, as this kind of disintegrated procedure of investigation throws doubts on the prosecution case, and makes it fragile. But, at the same time, in order to combat with this menace, which attempts to pollute the stream of justice, the judiciary at all levels has to play a vital role in blocking these slip away points, because the procedure of inquiry has no legitimate sanctity, however, such extra legal reports certainly add burden upon the judicial process of criminal trial. Time and again this Court as well as Hon'ble Supreme Court have been reminding the trial Courts to act in accordance with the law at the stage of framing of charges and not to act as a mouthpiece of prosecution.

The senior officers are well aware of law relating to the investigations, but they deliberately violate the same for extraneous considerations to extend help to the accused by giving favourable reports in their favour and investigating officer, who is subordinate to such inquiry officer has no option, but to mould the final report to avoid the wrath of the senior police officer. This practice encourages

criminals and gives rise to crime and though the State of Punjab enjoys power of superintendence upon the police department, but the State too has failed to check this illegal practice being carried out openly in every other criminal case. With these observations, it is expected that the State would take necessary effective steps to bring in order the procedure of investigation and prosecution of accused, in accordance with statutory provisions contained in Code of Criminal Procedure. This Court as well Hon'ble Supreme Court on various occasions have held that the accountability of the police officers and their misconduct cannot be ignored and the necessary disciplinary/penal action must be initiated against such guilty officers. The reference in this regard can be made to “**State of Gujarat Vs. Kishan Bhai and others**”, 2014 (5) **SCC 108.**

Thus, in the above conspectus, this Court is of the view that the impugned order dated 27.07.2018 suffers from grave illegality and impropriety and warrants interference as the trial Court has failed to exercise the jurisdiction vested in it for alteration of charge because the material on record *prima facie* suggests that respondent No.2 has committed the offence punishable under Sections 302 and 336 IPC and Sections 25 and 27 Arms Act, 1959 and his co-accused, who violated the conditions of armed licence, has *prima facie* committed the offence punishable under Sections 25 and 27 Arms Act, 1959.

Resultantly, the impugned order dated 27.07.2018 is set aside and the application filed under Section 216 Cr.P.C. is allowed. It is ordered that the trial Court shall frame the charges afresh against the accused persons and proceed with the trial. It is also directed that the trial Court shall make an endeavour to conclude the trial expeditiously preferably within six months as the same has already been delayed.

Let a copy of this judgment be sent to the Chief Secretary, State of Punjab and the Director General of Police, Punjab for further necessary action.

(MANOJ BAJAJ)
JUDGE

21.02.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No