

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.31908 of 2017
Date of Decision: 05.10.2023

Bholu and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Jhanji, Sr. Advocate with
Mr. Himmat Singh Sidhu, Advocate
for the petitioners.

Mr. Ashok K. Sehrawat, DAG, Haryana.

Mr. Inder Pal Goyat, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

The present petition has been filed impugning the order dated 11th of August, 2017 passed by Additional Sessions Judge, Jhajjar whereby order dated 5th of February, 2015 passed by ACJM, Jhajjar summoning the petitioners to face trial for offence punishable under Sections 323, 325, 506 read with 34 IPC stands affirmed.

2. Respondent No.2 preferred complaint against the petitioners alleging that on 14th of August, 2011 at about 9.00 AM he went to see off her maternal aunt at bus stand. When he was coming out of the bus stand he had an altercation with the driver of bus bearing

No.HR-63E-0777. He was given beatings by the accused persons. After conducting preliminary inquiry, Trial Court summoned the petitioners to face trial for offences punishable under Sections 323, 325, 506 r/w 34 IPC. The petitioners approached this Court by way of CRM-M No.12333 of 2015 but withdrew the same. The same was disposed off vide order dated 21st of April, 2015 as dismissed as withdrawn with liberty to the petitioners to avail remedy of revision. The petitioners preferred revision which stands dismissed vide impugned order.

3. Ld. Senior Counsel while assailing the impugned orders passed by the Courts below would submit that *qua* the same incident FIR No.484 dated 14th of August, 2011, at Police Station Jhajjar was registered wherein the complainant/respondent No.2 was tried along with petitioners No.4, 5 and 8. The said FIR case has resulted in judgment of acquittal dated 14th of May, 2014 as such the petitioners cannot be tried for the same offence again, as the same would be in the teeth of bare provisions as contained under Section 300 of the Code. He further submits that there is an old enmity between the parties owing to the transport business and thus present criminal proceedings are nothing but an abuse of process of law whereby an attempt has been made to falsely implicate the petitioners. Senior Counsel has further referred to the judgment of acquittal to submit that the statement of

respondent No.2/complainant was recorded under Section 313 Cr.P.C. wherein he specifically claimed to have been falsely implicated. Thus, after having earned acquittal in FIR case by denying the scuffle, present complaint has been filed in September, 2014 i.e. after five months from the date of acquittal in the FIR case.

4. Per contra, counsel for the respondent/complainant submits that even at the time FIR came into being respondent No.2/complainant made a complaint to the police authorities wherein he requested for taking action against the other accused(s) and the said fact was put to ASI Ranbir Singh who appeared as PW-1. Thus, the stand of respondent/complainant is consistent from the date of incident itself that there was assault on him by the petitioners including petitioners No.4, 5 and 8 i.e. Jagdish, Subhash and Mahabir.

5. I have heard counsel for the parties and have carefully gone through records of the case.

6. In order to appreciate the arguments raised by Ld. Senior Counsel representing the petitioners it will be apt to peruse Section 300 of the Code. The same reads as under:

“300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been

made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate. (6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.”

7. Trite it is that where in a course of transaction several offences are committed for which separate charges are made but a person is tried in respect of some of those charges, and not all, which results in acquittal or conviction, he can be tried for distinct offence for

which at the former trial or separate charge may have been made but was not made.

8. Ld. Senior Counsel is right in contending that the incident/occurrence is same and the petitioners No.4, 5 and 8 already stand tried. Trial stand concluded and has culminated in the judgment dated 11th of April, 2014. Thus, petitioners No.4, 5 and 8 could not have been summoned and the Revisional Court ought to have quashed the summoning order *qua* them. However, the technical plea raised on behalf of accused Nos.4, 5 and 8 cannot hold good for other petitioners especially when at the threshold the Courts below have found that the ocular evidence of the complainant stands fully corroborated by documentary evidence in form of DD entry No.29 dated 18th of August, 2011, MLR dated 18th of August, 2011 which show that there were injuries on the body of the complainant which got examined on the same day. At the stage of cognizance and summoning, Magistrate is required to apply his judicial mind only with a view to taking cognizance of the offence i.e. to find whether *prima facie* case is made out for summoning the accused person(s). He is not required to go into the question, whether the material on record will lead to conviction or not. That being the scope of the preliminary inquiry, this Court does not find any reason to hold summoning order bad *qua* other accused(s)

but for those who have already been tried *qua* the same offence in the FIR case.

9. In view of above, present petition is allowed *qua* petitioners No.4, 5 and 8 and is dismissed qua other petitioners i.e.1, 2, 3, 6 & 8.

10. Impugned order dated 11th of August, 2017 passed by Additional Sessions Judge, Jhajjar and that dated 5th of February, 2015 passed by ACJM, Jhajjar are hereby set aside *qua* petitioners No.4, 5 & 8 only.

11. Needless to say, anything observed herein shall not be construed to be an expression of opinion on the merits of the case.

October 05, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No