

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

CRM-M-13141-2022

Date of Decision: May 01, 2023

HARBANS KAUR

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.K.S. Phoolka, Advocate for petitioner.
Mr. V.K. Gupta, AAG, Punjab.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside orders dated 21.02.2018 and 09.03.2021 passed by the Courts below whereby an application filed under Section 323 CrPC, at the instance of petitioner-complainant for committing the case to Court of Sessions by framing charge under Section 302 IPC stands declined.

2. In the present case, arising out of an incident dated 26.05.2014, FIR No.35 dated 04.06.2014 under sections 323, 325 and 34 IPC was registered at P.S. Phul, District Bathinda, based on a complaint submitted by one Mohinder Singh who later unfortunately expired on 06.06.2014 resulting into inclusion of offence under Section 302 IPC in the aforementioned FIR. Upon investigation, based on statement made by doctors, challan was filed under Section 323, 325 and 34 IPC. Having considered the challan as well as having heard the parties, trial Court ordered framing of charge under Sections 325, 323

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and 34 IPC. Admittedly, the aforesaid order of framing of charge was never challenged by complainant-petitioner.

3. Later, during trial, the petitioner-complainant moved an application invoking Section 323 CrPC with a prayer that the case should be committed to the Court of Sessions by framing charge under Section 302 IPC. The trial Court vide order dated 21.02.2018 dismissed the aforesaid application. Aggrieved against the same, the petitioner filed revision petition which was dismissed being rendered infructuous vide order dated 09.03.2021.

4. Impugning the aforementioned two orders dated 21.02.2018 and 09.03.2021, learned counsel for the petitioner submits that in the facts of the present case, the offence under Section 302 IPC was made out as the deceased having received injuries in the incident dated 26.05.2014 later succumbed to those on 06.07.2014 and the trial was thus required to be committed to the Court of Sessions.

5. On the other hand, learned State counsel submits that the application filed at the instance of petitioner, invoking Section 323 CrPC was not maintainable, in the absence of any challenge made to the order framing charge.

6. I have heard learned counsel for petitioner and gone through the records.

7. In the present case, upon consideration of final report and having heard the parties, charges were framed by the trial Court, under Sections 325, 323 and 34 IPC and the order framing charge was never

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challenged by the petitioner-complainant. In the absence of there being any challenge to the order framing charge under Sections 325, 323 and 34 IPC, the application filed at the instance of the petitioner-complainant, invoking Section 323 of CrPC for sending the trial to the Court of Sessions was not maintainable. The charges framed under Sections 325, 323 and 34 of IPC were purely triable by Magistrate and there was thus no question of committing the trial to the Court of Sessions, particularly, in the absence of any reliable evidence on record which could make out that an offence exclusively triable by the Court of Sessions was made out.

8. More than that, the trial being over having resulted into conviction of private respondents, prayer for invoking Section 323 CrPC cannot be entertained as the same vests with the Court before Judgment is signed. In the present case once the trial is over, no such power as prescribed under Section 323 CrPC can be exercised at this stage.

9. In view of the discussions made hereinabove, finding no illegality or perversity with the discretion exercised by the Courts below, while passing the impugned orders, the present petition stands dismissed.

01.05.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>