

CRR-2113-2018 (O&M) & a connected matter

253 (2 cases)

2023:PHHC:166401/2023:PHHC:166403

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

Date of decision: 18.08.2023

1) CRR-2113-2018 (O&M)

Harjit Singh and others

....Petitioners

Versus

State of Punjab and another

....Respondents

2) CRR-2212-2018 (O&M)

Fateh Jang Singh and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Preetinder S. Ahluwalia, Advocate
for the petitioner(s).

Mr. Amit Shukla, A.A.G., Punjab.

Mr. Harshit Jain, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

These two revision petitions have been preferred impugning order dated 19.05.2018 passed by Ld. Trial Court, whereby the petitioners have been charged for offence punishable under Section 306 read with Section 120-B IPC and further order dated 23.05.2018, whereby formal charge-sheet has been drawn *qua* petitioners.

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2. Criminal Revision No.2113 of 2018 has been preferred by a Member Panchayat i.e. petitioner No.1 and co-villagers i.e. petitioner Nos.2 to 6.

3. Criminal Revision No.2212 of 2018 has been preferred by Sarpanch and Member Panchayat.

4. Occurrence relates to death of Harnek Singh. Complainant is the unfortunate wife. As per the case pleaded by complainant, accused i.e. Fateh Jang Singh, who happens to be the Sarpanch of village, in connivance with other co-accused managed to pass a resolution dated 29.11.2013 to consider the water tank at a place where passage to the house of petitioner exists. The objective pleaded behind the harassment was that the deceased husband of complainant did not cast his vote in favour of accused– Fateh Jang Singh in Panchayat elections. It has been claimed that in execution of the said resolution on 01.08.2014 the accused persons along with police officials and officials of Water Supply and Sanitation Department, Sub Division, Dhuri came to the place of occurrence and started constructing the wall to close back gate of house of the complainant. This led to fight. Harnek Singh was given beatings. Feeling depressed he set himself on fire at around 4.30 p.m. leading to his death. Ld. Trial Court vide impugned order held that from the oral testimony of the complainant's witnesses as well as the documentary evidence on record the version of the complainant stood corroborated. Ld. Trial Court further held that since *prima facie* case under Section 306 IPC read with Section 120-B IPC is made out against the accused persons, they need to be examined. On charge, the Ld. Trial Court found that there was *prima facie* case made out to frame charge against all

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the accused persons and it is not necessary for the prosecution to establish beyond all the reasonable doubt that accusation which they are bringing against accused persons is bound to be brought home against them and held that *prima facie* case having been made out against accused persons charge be framed. The said charge-sheet now stands framed vide order dated 23.05.2018.

5. As regards criminal revision bearing CRR No.2212 of 2018, counsel for petitioners submits that Ld. Trial Court erred in ordering that charge be framed against petitioners while holding that *prima facie* case is made out against the petitioners. It has been pleaded that petitioners had no role whatsoever to play at the time of occurrence especially when the Additional District Magistrate, Sangrur had written a letter (Annexure P-6) to the Superintendent of Police, Sangrur for providing police help, as whenever the department tried to start the work, Harnek Singh obstructed and get stopped the work and threatened the officials to commit suicide. It has further been pleaded that Duty Magistrate, Darshan Singh Sidhu who was deputed on the spot, also stated in his statement (Annexure P-9) that obstruction was being done by the opposite party and that no role was played by the present petitioners. Further even as per the statement of police officials including ASI Sukhdev Singh, who actually tried to douse the fire, stated that Harnek Singh had committed suicide by setting himself on fire with an intention to stop the ongoing work which was going on with the orders of the authorities concerned. It has further been pleaded that illegality has been committed by the Trial Court by not calling the report under Section 210 Cr.P.C. which was otherwise mandatory under the provisions of

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law. If the report would have been called by the Trial Court, the police ought to have produced the material before the Court and in that situation there remains no occasion whatsoever with the Trial Court to summon the petitioners as accused under Section 306 read with Section 120-B IPC. Further, it has been pleaded that perusal of dying declaration would indicate that the allegations of causing beatings as reflected in the dying declaration are not made part and parcel of the complaint as videography was done as per challan as per which no offence has taken place. Therefore, ASI Sukhdev Singh, who was named in the dying declaration, has not been made an accused in the complaint nor has he been summoned to face trial.

6. As regards criminal revision bearing CRR No.2113 of 2018, except aforesaid arguments the stark argument of counsel for petitioners is that none of the petitioners have been named in the dying declaration which was ostensibly recorded by the Judicial Magistrate.

7. Counsel for complainant/respondent No.2 has argued that the objective behind the harassment was that the deceased husband of complainant denied to cast his vote in favour of accused– Fateh Jang Singh, who happens to be the Sarpanch of village and therefore the said accused in connivance with other co-accused managed to pass a resolution to consider the water tank at a place where passage to the house of petitioner exists. Though he is not able to deny the fact that none of the petitioners in CRR No.2113 of 2018 have been named in the dying declaration.

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

9. As per the settled law, at the time of framing of charge the test is ‘*prima facie*’ case. Reference can be made to the judgment passed in the matter of ***State of Madhya Pradesh vs. Sheetla Sahai and others, (2009) 8 SCC 617***, wherein the Apex Court held as under:-

“xxxx xxxx xxxx

51. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different. A distinction must be borne in mind that whereas at the time of framing of the charge, the court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

52. In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Mr Tulsi that where the entire materials collected during investigation have been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused.

53. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, sub-section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

xxxx xxxx xxxx”

10. The same view has been reiterated in the judgment passed in ***Asim Shariff vs. NIA, (2019) 7 SCC 148*** wherein the Apex Court held as under:-

“xxxx xxxx xxxx

16. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in Union of India v. Prafulla Kumar Samal had an occasion to consider the scope of Section 227 CrPC and it held in para 7 as under :

‘7. Section 227 of the Code runs thus:

‘227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.’

The words ‘not sufficient ground for proceeding against the accused’ clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

xxxx xxxx xxxx”

11. Thus at this stage, without going into the probative value, this Court is to assess as to whether the record satisfies the prescribed test or not.

12. In the present case, deceased was aggrieved of construction of water tank at the backside of his house. He was taking the

same to be harassment at the hands of Sarpanch Fateh Jang Sing. On the fateful day, his dying declaration was recorded which reads as under:-

“FIR No. 157 dated 01.08.2014 U/s 309, 447, 511, 429 IPC P.S. Sadar, Duri.

Q: At what time it happened?

Ans: 01 Aug at 05:00 p.m.

Q: Where were you and what had happened?

Ans: I was in my house in the village. The Panchayat was constructing a wall on the panchayat's land. I and my wife and other family members had requested the Sarpanch and other Panchayat members that if you want to construct wall on this land then get us some other public way for passage.

Q: What happened after that?

Ans: I was beaten by the Police officials and the other persons standing with Sarpanch amongst whom Fateh Jang Singh S/o Raghuvir Singh (Sarpanch), Harjinder Singh S/o Karnail Singh who had beaten me. One Sher Singh had also beaten. At that time there were other people too. SI Sukhdev Singh had also beaten me when I have stopped them from raising wall.

Q: What you did after that?

Ans: I had brought oil from my house which was nearby and had poured the oil on me and had set myself on fire.

Q: Who had put of the fire?

Ans: My son Swaranjit Singh, wife Charanjit Kaur, mother Balbir Kaur and other people had put of fire.

Q: Who had brought you to the hospital?

Ans: Sukhdeep, Mandeep Singh, Manpreet etc. had brought me to Dhuri hospital.

Q: What happened after that?

Ans: My family members and former sarpanch Amrik Singh S/o Joginder Singh along with my son had brought me to hospital.

Q. Do you want to say anything else?

I am a poor person and am upset from being neglected by the whole administration and for being upset I had set myself on fire. I want justice.

RO&AC

RTI of Harnek Singh

The aforesaid statement of Sh. Harnek Singh is recorded by me in my handwriting in presence of Sh. Himanshu Gupta, who declare him fit for statement vide his separate certificate. Sh. Harnek Singh although in a burn state is in sound mental state to depose his version. Sh. Harnek Singh gave the aforesaid statement out of his free will and volition and without any sort of external pressure. After recording the statement the same is read over and explained to him and his thumb marked (RTI) the same in my considered opinion Sh. Harnek Singh is fully fit to give the statement and is having sound mental condition during the entire process of recording.

Sd/- Ashok Kumar Mann,
Duty /JMIC/CHD

02 Aug, 2014

Patient Sh. Harnek Singh was physically fit and has sound mental status during the statement.

Sd/- Himanshu
JR-I-GS-II,
2/Aug/2014”

13. In the complaint, the precise allegations are as under:-

“xxxx xxxx xxxx

4. That about a few year ago, the accused No.1 in connivance with other accused vide resolution dated 29.11.2013, has left passage from the same common land bearing khasra No.255 to Bahadur Singh, Bhinder Singh and Daljit Singh.

5. That after that the above named accused persons started to harass the husband of the complainant that they will close the passage leading to the house of the complainant from backside and will construct a khel at the place where the passage exists and they will not allow the husband of the complainant to use the said passage. The main reason behind this motive of the accused was that on 20.12.2013 after the panchayat left the passage for above named other persons, Harnek Singh approached accused at the house of accused No.1 and asked them to put the same resolution like dated 29.11.2013. At that time he was accompanied by his brother Daljit Singh. At that time all the accused were present at the house of Fatehjang Singh and accused No. 4 brought a Gutka (Japji Sahib) and asked the husband of the complainant to place his hand on the said Gutka and to swear by the God that 'he has cast his vote in Panchayat election in favour of accused No.1'. Being a true man the husband of the complainant told the accused that he did not cast his vote in favour of accused No.1 and he has cast his vote to opposite candidate namely Gurpreet Singh son of Harpal Singh. This made the accused furious and they threatened the husband passage, which is running on the backside of the house of complainant and they will block the same and will construct the khel of the waterworks. On returning to home deceased Harnek Singh told this whole incident to the complainant and from that day onwards, the husband of the complainant became depress, as he and family of the complainant used to bring their tractor and other agricultural implements through that passage, as it was not possible to bring the same from front side street, as the same was not wide enough and if they parked their tractor and other agricultural implements in the street, the neighbourer used to quarrel with Harnek Singh and family of complainant.

6. That in this regard husband of the complainant approached concerned authorities from BDPO Dhuri to DSP Dhuri, to Sub Divisional Magistrate, Dhuri, to Deputy Commissioner, Sangrur but the accused by presenting wrong facts before the concerned authorities and by using political pressure got sanctioned the water works and they were able to get orders to block the passage and to construct a wall in front of the gate of the house of the complainant, which made the husband of the complainant more distress.

7. *That on 01.08.2014, the accused along with some police officials and officials of Water Supply and Sanitation Department, Sub Division, Dhuri came to the place of occurrence and they started to construct wall and closed the back gate of Harnek Singh's house. This made Harnek Singh very depressed and he started to weep and he told the complainant that 'now it will be impossible for them to keep their tractor and agriculture implements protected in their house and if they will park the same outside the house then someone will commit theft or will cause damage to tractor and other agriculture implements and it will cause a lot of harm to their family. He also told the complainant that this whole conspiracy has been woven by the accused only to take revenge from him as he did not cast his vote in panchayat election to accused No.1.*

8. *That the complainant along with her son Swaran Singh, sister in law Kulwant Kaur wife Daljit Singh and Manpreet Singh son of Daljit Singh (nephew of Harnek Singh) and Harnek Singh's mother Balbir Kaur went to the official present on the spot and told them that do not raise construction in front of the backside gate of Harnek Singh's house and to put wires, as it will ruin their life and this act has made Harnek Singh very depressed. In the meantime at about 4:30 PM husband of the complainant set him on fire by putting diesel on him and came out of the house and came closer to the boundary wall, which the accused in connivance with other official were constructing. The family of Harnek Singh and 1/2 police officials tried to control the fire, when the accused saw this, they fled from the spot. Even at that time, the husband of the complainant was uttering only one thing that all the accused by making a gang forced him to take this drastic step and only they are liable for this incident.*

xxxx xxxx xxxx”

14. On the comparison of dying declaration made by deceased and the allegations levelled in the complaint, it is evident that on the date of occurrence the deceased levelled allegations against Sarpanch Fateh Jang

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Singh son of Sh. Raghuvir Singh, Sher Singh son of Sh. Rajinder Singh and Harjinder Singh son of Sh. Karnail Singh (now deceased).

15. So far as the petitioners in CRR No.2113 of 2018 are concerned i.e. Harjit Singh, Gursewak Singh, Gurwinder Singh, Pritam Singh, Charanjit Singh and Gurpreet Singh, there is no overt act attributed apart from *bald allegations that they conspired with Sarpanch Fateh Jang Singh and had aided him by forming party against the deceased* which is not corroborated by dying declaration of the deceased.

16. In light of above, the petition bearing CRR No.2212 of 2018 preferred by Sarpanch Fateh Jang Singh and Sher Singh is ordered to be dismissed as the material on record makes out a *prima facie* case against them. However, the petition bearing CRR No.2113 of 2018 is allowed as apart from the bald allegations there is no material on record to satisfy the test of *prima facie* case against them as prescribed under law.

17. Pending application(s), if any, shall also stand disposed of.

18. A photocopy of this order be placed on file of the connected case.

**(PANKAJ JAIN)
JUDGE**

August 18, 2023
ashish

Whether speaking/reasoned: **Yes/No**

Whether reportable: **Yes/No**