

2024:PHHC:109350



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-M-37113-2018 O&M)
DECIDED ON:25.04.2024

SHIV KUMAR AND OTHERS
.....PETITIONERS

VERSUS

STATE OF HARYANA
.....RESPONDENT

AND

2. CRR-258-2019 (O&M)
SHIV KUMAR AND OTHERS
.....PETITIONERS

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. V.K. Jindal, Sr. Advocate with
Ms. Garima Jindal, Advocate
for the petitioners (in (CRM-M-37113-2018).

Mr. Sukhpreet Singh, Advocate for
Mr. Tanvir Singh Grewal, Advocate
for the petitioners (in CRR-258-2019).

Mr. G.S. Dhillon, AAG, Haryana.

Mr. Ravinder S. Bhudhwar, Advocate
for the complainant.

SANDEEP MOUDGIL. J.

1. RELIEF SOUGHT

Vide this common, I shall be disposing off, both the afore-said
petitions together, as common question of law is involved in both the
petitions.

CRM-M-37113-2018, has been preferred by the petitioners seeking quashing of the impugned order dated 07.05.2018 (Annexure P-4) vide which, Judicial Magistrate Ist Class, Yamunanagar at Jagadhari has passed an order of commitment in FIR No. 84, dated 14.05.2017, under Sections 365, 323, 325, 120-B IPC registered at Police Station Radaur (Annexure P-1) wherein, the police has submitted the challan/final report and supplementary report, under Sections 365, 323, 325 and 120-B IPC, whereas, the Magistrate after appreciation of evidence has committed the case to the Sessions Judge, considering the case exclusive triable by the Sessions Court, finding that on the basis of the material available the case is made out under Sections 364, 365, 323, 325, 307, 120-B and 201 (Part III) IPC.

CRR-258-2019 has been preferred by the petitioners against the impugned order and the charge-sheet dated 25.10.2018 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhari vide which, charges under Sections 120-B, 323, 325, 364, 307 and 201 IPC read with Section 120-B IPC were ordered to be framed against the petitioners.

2. FACTS

The present FIR was registered at the instance of Dinesh Kumar-complainant, on the allegations that he received a call from his brother Mukesh Mann that his leg has been broken and he is being taken in a car and on suspicion that his brother had a dispute with the petitioners namely Shiv Kumar (petitioner No.1), Satish Kamboj (petitioner No.2) and Amar Nath. Hence, the present FIR.

3. SUBMISSIONS

ON BEHALF OF PETITIONERS:

It has been submitted on behalf of the petitioners that the police investigated the matter and submitted challan under Sections 323, 325, 365,

and 120-B IPC. The injured person suffered a leg fracture. It is further submitted that the Magistrate should have framed charges only after scanning the Final Report but in the present case, the Magistrate has passed a commitment order, that it is a case of Sections 307, 364 and 201 (Part II) IPC, without appreciating the evidence. There is no evidence either by the complainant or by the injured that they have been kidnapped with the intention to commit murder. Thus, it is not a fit case to attract Section 364 IPC (Kidnapping with intent to murder). In fact, as per the version of the injured, he was taken to a hospital by the assailants themselves and if the assailants had the intention to kill the injured, they would not have taken the injured to the hospital themselves. Similarly, there was no evidence, to attract Section 307 IPC, as the accused had no intention to commit murder, therefore, *prima-facie*, no offence under Section 307 IPC (Intent to murder) would be made out. It was a case of simple accident wherein, doctors opined that injuries were not dangerous to life and were rather grievous only. The prosecution has presented a challan under Section 325, 323, 365 and 120-B IPC only. Moreover, there is no iota of evidence that the petitioners have tried to destroy the evidence and as such Section 201 (Part II) IPC is also not made out. The Magistrate has not complied with the provisions of Sections 207 and 209 Cr.P.C.

It is asserted that as per Sections 65-A and 65-B of Indian Evidence Act, the evidence of CCTV footage will be appreciated only at the time of trial and as such, any finding recorded by the Magistrate on the basis of CCTV footage is absolutely erroneous.

Further more, the Magistrate has failed to appreciate that the statements of two injured namely Mukesh Kumar and Rajinder Kumar, were found to be improved, which were recorded after long, and unexplained delay

(Annexures P-8 and P-9 respectively attached with CRR-258-2019). Hence, the ocular version is not corroborated by the medical evidence and the charges have been wrongly framed against the petitioners.

ON BEHALF OF RESPONDENT-STATE & COMPLAINANT:

It is submitted by learned State counsel assisted by the counsel for the complainant that due to the injuries suffered by the injured they were referred to PGI where the doctor declared the said injured unfit to make statement. As per MLR of injured Rajinder Kumar, it was advised to keep him under operation and x-ray opinion whereas, injured Mukesh, had suffered seven injuries and injuries no. 1, 4, 5, 6 and 7 were kept under observation and injury no. 2 and 3 were declared simple in nature. It is further submitted that only after recording the statement of injured, Sections 323 and 325 IPC were added and after verifying the facts of incident Section 364 IPC was deleted. The injured Rajinder Kumar suffered fracture in his both legs, thus, Section 325 IPC was added. Accordingly, final report stands presented against all the accused persons under Sections 323, 325, 365 and 120-B IPC. Learned Magistrate, finding a *prima-facie* offence under Section 307 and 364 IPC, ordered to commit the trial of the case before the Sessions Court to face trial under Sections 307 and 364 IPC and accused were directed to appear before the trial Court on 15.05.2018. Since the order dated 05-07-2018 has been rightly and legally passed by the Magistrate after hearing the arguments of both the parties and after going through the documents and evidence collected by the police. As such the present petition deserves to be dismissed.

4. ANALYSIS & CONCLUSION

After hearing the respective counsel for the parties and on perusal of record with their able assistance, this Court finds that challan

against the accused persons was presented under Sections 365, 323, 325, and 120-B IPC. However, the Court believed that a *prima facie* case also existed under Sections 364 (kidnapping) and 307 (attempt to murder) IPC, despite the fact that the Investigating Officer has not filed charges under these sections. It is clear evident from the CCTV footage that the accused persons were trying to run over the complainant's motorcycle, hitting them with a car, beating them, and then taking them away in a van and throwing them on a railway track, which suggest a *prima facie* case under Sections 307 and 364 IPC. Additionally, the accused persons were seen cleaning up the incident spot, indicating an attempt to destroy evidence, which made a case under Section 201 (Part-II) IPC. Since, the offences under Sections 307 and 364 IPC are exclusively triable by the Court of Session, therefore, the case was committed to the Sessions Judge, Yamuna Nagar at Jagadhari for trial.

In view of the discussions made hereinabove, this Court does not find any merit in both the petitions i.e. CRM-M-37113-2018 and CRR-258-2019. As such the same are dismissed being devoid of any merits.

25.04.2024

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**(SANDEEP MOUDGIL)
JUDGE**

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