

201 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
CHANDIGARH
CRM-M-43837-2018 (O&M)
Date of Decision: 30.01.2024

...Petitioner

...Respondent

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

Mr. J.S. Ghuman, Advocate for respondents No. 2 to 4.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking setting aside/quashing of the order dated 05.09.2018 passed by the Court of learned Judicial Magistrate Ist Class, Phillaur (Annexure P-10), whereby the application filed by the petitioner under Section 323 of Cr.P.C. for committal of the case to the Court of Sessions Judge, Jalandhar, was dismissed in case FIR No. 193 dated 10.12.2011 registered under Sections 307, 324, 323, 341, 506, 148 and 149 of Indian Penal Code at Police Station Phillaur, District Jalandhar.

2. Learned counsel for the petitioner *inter alia* contends that the impugned order was passed without taking into consideration the factual matrix of the case and erroneous findings against the facts have been recorded by learned Judicial Magistrate Ist Class, Phillaur in the impugned order dated 05.09.2018. Learned counsel refers to the operative part of the impugned order in which it was recorded that the petitioner has made

material improvements and intention to kill was never projected by the petitioner in the initial version, on the basis of which, FIR was lodged. Learned counsel further refers to the FIR, in which it has been clearly indicated that his brother Balwinder Singh, his sons and other unknown persons surrounded him and inflicted injuries upon him with intention to kill him. Learned counsel further placed reliance upon the judgment of Hon'ble Supreme Court passed in *State of M.P. Vs. Kashiram and Others* (2009) 1 R.C.R. (Criminal) 956, this Court's judgment passed in *Subhash Chand Vs. State of Haryana and Others* (2011) 2 RCR (Criminal) 372, Bombay High Court's judgment passed in *Babasaheb Diwanrao Barase Vs. The State of Maharashtra and Others* (2013) 17 RCR (Criminal) 9 and Orissa High Court's judgment passed in *Basanta Ku. Sahoo and Another Vs. State of Orissa and Another* (2017) 68 Orissa Crl. R. 1131.

3. Per contra, learned State counsel submits that the petitioner has never filed an application under Section 216 of Cr.P.C. for alteration of charges, till date and the charges were framed on 22.03.2013 and as such petitioner has no *locus standi* to file the present petition. Moreover, the power under Section 323 of Cr.P.C. is discretionary power, which the Court can exercise taking into consideration the facts and circumstances of the case on being satisfied that the case ought to have been tried by the Court of Sessions.

4. Learned counsel for respondents No. 2 to 4 while opposing the prayer made in the present petition submits that there is no opinion of the Medical Officer with regard to the injuries being individually or collectively dangerous to life and the nature and extent of injuries clearly indicates that offence under Section 307 of Indian Penal Code is not made out and thus the learned trial Court has rightly rejected the application filed by the petitioner

under Section 323 of Cr.P.C.

5. Having heard the learned counsel for the parties and after perusing the record, this Court finds no ground to interfere in the impugned order dated 05.09.2018 (Annexure P-10) passed by learned Judicial Magistrate Ist Class, Phillaur, which has been passed after taking into account the totality of the circumstances and the evidence available on record and the discretion exercised by the Judicial Magistrate Ist Class, Phillaur, cannot be set aside on the ground that another view is possible.
6. In view of the aforesaid discussions, the present petition is devoid of any merit and the same is hereby dismissed.
7. Pending CRM(s), if any, is also disposed of accordingly.

30.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No