



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

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**CRR-1831-2022 (O&M)
Date of decision: 24.07.2024**

Kuldeep Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurmohan Singh Bedi, Advocate and
Mr. Pawandeep Singh, Advocate for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Kanishk Swaroop, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J.

1. The petitioner-complainant (hereinafter referred to as 'complainant') has filed the instant revision petition challenging the order dated 13.07.2022 passed by learned Additional Sessions Judge, Gurdaspur, vide which an application moved under Section 227 of the Cr.P.C. by respondent No.2-accused for his discharge in case FIR No.83 dated 25.05.2020 under Sections 302, 307, 506, 34 of the IPC and Sections 25/29 of the Arms Act (Section 120B of the IPC added and Section 27 of the Arms Act dropped lateron) registered at Police Station Sadar Batala, Police District Batala, was allowed.

SUBMISSIONS OF THE COMPLAINANT

2. Learned counsel appearing for the complainant has made the following submissions:-

2(a). that the learned Trial Court acted erroneously in both facts



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and law by allowing the application filed by respondent No.2-accused Kuljit Singh, and discharging him. The impugned order, on the face of it, is perverse and contrary to the settled principles of law. The learned Trial Court completely disregarded the settled law by relying on the disclosure statements of accused Gurdip Singh to decide an application under Section 227 of the Cr.P.C., thus, discharging respondent No.2-accused solely based on this statement;

2(b). that furthermore, during investigation, respondent No.2-accused was joined in investigation and offence under Section 120B of the IPC was added in the present FIR on 17.12.2020. It was found that respondent No.2-accused was fully aware of the ongoing dispute over the village pond, involving his family and others. Despite this knowledge, he conspired with his family members and left his licensed weapon in the house, intending for it to be used for his family members whenever needed;

2(c). that curiously, despite there being specific allegations and statements of some of the co-villagers recorded under Section 161 of the Cr.P.C., indicating that respondent No.2-accused intentionally left his licensed weapon behind, the learned Trial Court, ignored this fact and instead by placing reliance upon the disclosure statement of accused Gurdip Singh formed the entire basis for discharging respondent No.2-accused, which is inadmissible at the stage of framing of charges. Furthermore, while exonerating accused Kulwant Kaur, Bhupinder Kaur and Palwinder Kaur, the investigating agency had explicitly stated in the challan that inquiry into the role of respondent No.2-accused was still pending. This was subsequently addressed in a



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supplementary challan presented against him since it came to light that respondent No.2-accused was aware of the dispute between his family and the others;

2(d). that attention was also drawn by the learned counsel to the statement under Section 161 of the Cr.P.C. of Harvinder Singh (annexed as Annexure P-5), a shopkeeper in the village, wherein he stated that the land belonging to accused Joginder Singh was part of the common village land; accused Joginder Singh and his family had been repeatedly obstructing the water supply to the common pond, leading to prior altercations with other villagers also; Harvinder Singh, further stated that respondent No.2-accused had often mentioned to him that since his family was at risk of conflict with the family of Sucha Singh, over the adjoining land, it had prompted him to acquire a licensed firearm which he had left at home while going on duty to his Army Unit so that as and when required, his family could use it;

2(e). that attention has also been drawn to the statement of Iqbal Singh under Section 161 of the Cr.P.C. (Annexure P-6) by urging that his statement also substantiated the case of the complainant as Iqbal Singh had categorically stated that he had repeatedly advised respondent No.2-accused, however, the latter had insisted that he would not allow anyone to use the village pond, and would also not withdraw the pending cases; respondent No.2-accused had also mentioned to him that he had left his firearm at home to be used by his brother and father in case of any dispute;

2(f). that despite these specific allegations and evidence gathered by the investigating agency, particularly concerning the act of

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respondent No.2-accused of leaving his firearm for potential use in future altercations, the learned Trial Court had erroneously discharged him. The reasoning given by the learned Trial Court that respondent No.2-accused was not present at the scene during the alleged incident as he was stationed at the Indo-China Border, and that his licensed weapon was securely kept at home with his wife, who was also a retainer of the weapon was fundamentally flawed, as the Arms Rules of 1962, which allowed for such retainers, were superseded by 2016 Rules, which do not permit any relative of a licensed holder to retain any weapon. Hence, the custody of licensed weapon by anyone other than the licensee was illegal under the law.

2(g). A prayer has been made that in the wake of the aforementioned facts and circumstances, respondent No.2-accused, who was an active conspirator to the crime should not have been discharged and thus, the instant petition be allowed.

SUBMISSIONS OF RESPONDENT NO.2-ACCUSED

3. Learned senior counsel for respondent No.2-accused has, however, vehemently opposed the prayer and submissions made by the counsel opposite and has submitted as under:-

3(a). that the impugned order is a very well reasoned order which does not warrant any interference. Admittedly, and as per the case of the prosecution itself, respondent No.2-accused was not present anywhere near the place of occurrence and on the fateful day and time was posted at the Indo-China Border. Even as per the case of the prosecution, the alleged firearm was not left behind with co-accused

Joginder Singh and Gudip Singh but had been left in lock and key. As



per the recoveries effected following the crime in question, a broken lock and a plier were recovered from the house of the accused, which as per the disclosure statement of accused Gurdip Singh had been used to break upon the cupboard which had been kept by respondent No.2-accused in safe custody. Hence, there could be no meeting of minds between respondent No.2-accused with his father accused Joginder Singh and Gurdip Singh, to conspire and give effect to the crime in question. While further drawing the attention of this Court to the allegations levelled in the FIR, it was argued that it clearly came across to be a sudden occurrence; there was no occasion for respondent No.2-accused to have anticipated any such quarrel between the parties as even as per the case of the complainant there was just a small dispute with accused Gurdip Singh regarding possession of the village pond. It was further argued that the opposite party for reasons rather obvious had tried to rope in the entire family of respondent No.2-accused by not even sparing the female members of their family.

FINDINGS OF THE COURT

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. The FIR in question came to be registered at the instance of complainant-Kuldeep Singh, who alleged that on 24.05.2020 at around 06:30 P.M., the complainant along with his brother Kulwinder Singh, nephew Arshpreet Singh, Surinder Singh, Manjodh Singh and Lovedeep Singh were conversing in a village street, when accused Gurdip Singh, his father accused Joginder Singh along with his mother Kulwant Kaur, his sister in law Palwinder Kaur (wife of respondent



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No.2-accused) and his own wife Bhupinder Kaur began to take illegal possession of the village pond by using a JCB Machine. The complainant party went to the spot. The accused party was counselled by the complainant party, however, it led to a verbal altercation between them. Allegedly at the instigation of the female members of their family, accused Gurdip Singh fired a shot from a pistol injuring Manjodh Singh (hereinafter referred to as 'deceased') on the back of his head; subsequently, a shot was fired at injured Lovedeep Singh on his right shoulder, and injured Arshpreet Singh on his right hip. Thereafter, accused Joginder Singh after taking the pistol from Gurdip Singh fired at the deceased. Following the assault, all the accused fled away from the place of occurrence with their weapon and the JCB Machine.

6. During the investigation, accused Gurdip Singh stated that he could retrieve the weapon of offence i.e. .32 calibre revolver from behind his bed, which he subsequently did. Kulwant Kaur, Bhupinder Kaur and Palwinder Kaur were found innocent during investigation and were placed in column No.2. The investigation qua respondent No.2-accused Kuljit Singh continued, and while the initial challan was presented against accused Gurdip Singh and Joginder Singh on 21.08.2020, a supplementary challan against respondent No.2-accused was presented on 22.02.2021. This supplementary challan included details with respect to the disclosure statement made by accused Gurdip Singh and also the recovery of a broken lock and iron plier used to break into the cupboard where the weapon of offence had been kept.

7. It is explicitly clear, and acknowledged, that respondent No.2-accused was not present at the scene of the crime. He was serving



in the Army and was present at his Unit at the Indo-China Border on the fateful day and time. The primary argument against respondent No.2-accused is based on the use of his weapon in the crime and the allegation that he conspired by intentionally by leaving the weapon behind.

8. For the purpose of deciding the instant petition, the disclosure statement of Gurdip Singh would be relevant. A perusal of his disclosure statement which has also been relied upon by the prosecution reveals that accused Gurdip Singh broke open the lock of respondent No.2-accused Kuljit Singh's cupboard and removed his licensed weapon, which was then allegedly used by both him and his father accused Joginder Singh. The firearm was indeed recovered, alongside the broken lock and iron plier. All these facts stand recorded by the police in the recovery memo which is part of the challan.

9. Before proceeding further, it would be pertinent to refer to the provisions of Sections 227 and 228 of the Cr.P.C. which are reproduced hereinunder:-

“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.

228. Framing of charge.-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and



direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried. ”

10. At the stage of framing of charges, the Court must determine whether there is a prima facie case against an accused or not. It needs to be emphasized that the charges cannot be based on suspicion alone. In the present case, the evidence collected by the investigating agency unequivocally demonstrates several points : respondent No.2-accused was not at the scene of crime, was serving in the army and was posted at the Indo-China Border, had a licensed weapon stored securely, and neither he nor his wife Palwinder Kaur gave the weapon of offence to either of the two accused Gurdip Singh or Joginder Singh. The weapon instead was accessed by accused Gurdip Singh through forced entry into the cupboard. Rather, respondent No.2-accused was challaned solely under Section 29 of the Arms Act for allegedly delivering the weapon to unauthorized persons. Though it has been asserted by learned counsel for the complainant that at this stage, the disclosure statement of co-accused and recovery pursuant thereto ought not to have been considered by the learned Trial Court, however, it needs to be pointed out that if an accused, at the stage of framing



charges can demonstrate, using the material in the charge sheet that there is a fundamental flaw which could significantly undermine the sustainability of the case, the same should not be overlooked by the learned Trial Court for it would be unjust to subject the accused to the agony of a protracted trial when from the beginning there could have no possibility of a conviction. The primary objective of permitting the accused to make submissions under Section 227 of the Cr.P.C. is to aid the Court in deciding whether to continue with the trial against an accused. There is no restriction in Cr.P.C. confirming this hearing to oral submissions alone; Hon'ble the Supreme Court in *State of Gujarat Vs. Dilipsinh Kishorsinh Rao: 2023 LiveLaw (SC) 874*, has categorically held that the learned Trial Court is permitted to consider material provided by the accused to the investigation officer.

11. The facts and other material collected during investigation which is part of the challan clearly indicate that respondent No.2-accused had securely stored his licensed weapon in a cupboard, and the lock was broken, not opened with a key, as also not disputed by the prosecution. It is not anyone's case, much less the case of the prosecution, that it was the wife of respondent No.2-accused who had handed over the keys of the cupboard to accused Joginder Singh and Gurdip Singh. Even if the case of the prosecution is accepted at face value, the material on record does not even remotely suggest that respondent No.2-accused Kuljit Singh or his wife Palwinder Kaur had delivered the weapon of offence to accused Gurdip Singh and Joginder Singh. There is no evidence suggesting that respondent No.2-accused

Kuljit Singh had consented to the delivery of the weapon of offence to

accused Gurdip Singh at any time. Therefore, in the light of the above discussion, the learned Trial Court did not err in discharging respondent No.2-accused Kuljit Singh vide the impugned order.

12. Accordingly, the instant revision petition is hereby dismissed.

24.07.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No