

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

CRR-1615-2021
Reserved on 04.04.2024
Date of decision: 22.04.2024

Ravinder Singh

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Saurabh Sharma, Advocate for the petitioner.
(Through Video Conferencing)

Mr. Viney Phogat, DAG, Haryana.

Mr. Deepak Vashishth, Advocate for respondents No.2 to 6.

KARAMJIT SINGH, J. (ORAL)

1. The present revision petition has been filed by the petitioner/complainant against order dated 29.09.2021 whereby learned trial Court passed order to frame charges under Sections 323, 325, 341, 308 read with Section 149 IPC and under Section 148 IPC against respondents No.2 to 6.

2. The brief facts of the case are that FIR Annexure P-1 was registered in this case under Sections 323, 325, 341, 308, 506 read with Section 149 IPC and under Section 148 IPC against respondents No.2 to 6 on the basis of statement of the petitioner wherein he stated that he got married with Payal daughter of Puran Singh, in 2016. Thereafter, his brother in law Parveen Kumar starting interfering in his married life which resulted in marital discord between the petitioner and his wife. On 31.10.2020, petitioner left for his

house from grain market, Pehowa on his motor cycle and when he reached near Mannat Palace, 5/6 boys who were on two motor cycles, intercepted him and attacked him with wooden *dandas*, *bindas* and *iron rods*, as a result of which, petitioner fell on the ground and tried to ran away towards pehowa but was attacked by above said boys and the said unlawful assembly also included his brother in law Parveen Kumar who gave iron rod blow on head of the petitioner. The other accused also caused injuries on legs and head of complainant and thereafter, the accused persons fled away from there after extending threats. Petitioner was taken to CHC Pehowa for his treatment. After completion of investigation, police presented challan against respondents No.2 to 6 and thereafter learned trial Court passed impugned order dated 29.09.2021 whereby charges under Sections 323, 325, 341, 308 read with Section 149 IPC and under Section 148 IPC were framed against respondents No.2 to 6. Being aggrieved, the petitioner has filed present revision petition.

3. Counsel for the petitioner has submitted that at the time of occurrence, petitioner was attacked by the accused persons including respondent No.2 Parveen Kumar who gave iron rod blow on head of the petitioner which resulted into fracture of frontal bone (vital part of body of the petitioner). The accused persons further caused multiple injuries to petitioner including fracture of left leg. The counsel for the petitioner has further submitted that the aforesaid injuries are fully explained in medico legal case summary Annexure P-5 of petitioner. The counsel for the petitioner has further contended that the aforesaid head injury clearly shows intention of respondents No.2 to 6 to kill the petitioner. The counsel for the petitioner while referring to Annexure P-5 has further submitted that aforesaid injuries were found to be

‘dangerous to life’ but were later on declared as ‘grievous’ in nature by cutting word ‘dangerous’ and by replacing it with word ‘grievous’. The counsel for the petitioner has further submitted that subsequent opinion dated 17.12.2020 (Annexure P-6) with regard to grievous nature of injuries was given by some other doctor and not by the same doctor who gave his medical opinion vide (Annexure P-5). It is further contended that in the given circumstances, *prima facie* case under Section 307 IPC is made out against respondent No.2, who gave iron rod blow which caused fracture of frontal bone of petitioner. In this context, the counsel for the petitioner referred to decision of Hon’ble Supreme Court in **Criminal Appeal No.92 of 2015** titled as **Jage Ram and Others Vs. State of Haryana** decided on 28.01.2015 wherein it was observed that for purpose of conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused, such intention may also be adduced from the other circumstances.

4. The State counsel while endorsing the contentions raised by counsel for the petitioner submits that the present petition be allowed.

5. On the other hand, counsel appearing on behalf of respondents No.2 to 6 has submitted that no case under Section 307 IPC is made out against respondents No.2 to 6. The counsel for the said respondents while referring to (Annexure P-5) submits that the injuries found on persons of the petitioner were declared as ‘grievous’ in nature by the concerned doctor as is evident from medico legal case summary of petitioner. It is further submitted that no doubt, firstly the concerned doctor had written that the injuries were ‘dangerous to life’, but thereafter, word ‘dangerous’ was replaced by word ‘grievous’ and the said cutting was attested by the concerned doctor at the same very time. It

is further submitted that even the concerned doctor vide his opinion dated 17.12.2020 gave specific opinion that injury on frontal bone of petitioner was found to be 'grievous' in nature and was not dangerous to life. The counsel for respondents No.2 to 6 has further submitted that there was no intention of the accused persons to cause any injury capable of causing death. It is further submitted that present petition deserves to be dismissed being devoid of merits.

6. I have considered the submissions made by counsel for the parties.

7. Section 216 of Cr.P.C. provides that Court may alter or add to any charge at any time before judgment is pronounced. In this regard, reference is also made to decision of Hon'ble Supreme Court in **Anant Prakash Sinha Vs. State of Haryana (2016) 6 SCC 105**.

8. At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage of framing of a charge, as has been held by the Hon'ble Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander and Another 2012 (4) RCR Criminal 377**.

9. In case of **Soma Chakravarty Vs. State through CBI (2007) 5 SCC 403**, the Hon'ble Supreme Court held that the settled position is that if on the basis of material on record, the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt

that the accused has committed the offence. At the time of the framing of the charges, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true. Before framing a charge, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a *prima facie* finding that there exists some materials therefor. Suspicion alone without anything more cannot form the basis therefor or held to be sufficient for framing charges.

10. Now advertent to the facts of the present case, it is *prima facie* established on record that at the time of occurrence respondent No.2 Parveen Kumar gave iron rod blow on head of petitioner Ravinder Singh and as per medico legal case summary (Annexure P-5), petitioner suffered fracture of frontal bone and fracture of left BB leg. Thus, it is apparent that fracture of frontal bone of petitioner with an iron rod is attributed to respondent No.2. The said injury was caused on vital part of the body of petitioner with an iron rod, thus, making clear his intention. As per decision of Hon'ble Supreme Court in **Jage Ram's case** (supra) referred by counsel for the petitioner, it is settled position of law that for purpose of Section 307 IPC, the intention of accused to kill the victim is of great significance and outweighs nature of injury. In the given circumstances, even if the nature of the concerned injury on person of the petitioner was declared as 'grievous', the same will not benefit the accused persons in a significant manner.

11. In light of the settled legal position coupled with the factual aspects of the case as has been discussed above, intention of respondent No.2 to cause fatal injury on head of the petitioner capable of causing death, is *prima facie* proved on record but the trial Court while ignoring all these aspects, framed charge under Sections 308, 325, 323, 341 read with Section 149 IPC and Section 148 IPC, without taking into consideration the ingredients of Section 307 IPC. No explanation is given by the trial Court why charge under Section 308 IPC was preferred instead of Section 307 IPC, as material on record reveal a higher offence and it was expected from the trial Court to frame the charge for more grievous offence and not to dilute the same by simply on the ground that accused were not challaned under Section 307 IPC by the police. The trial Court was required to frame the charge under Section 307 IPC and in the alternative Section 308 IPC, even if, the police has submitted challan under Section 308 IPC instead of that under Section 307 IPC.

12. For the foregoing reasons, the impugned order dated 29.09.2021 passed by the Court of Additional Sessions Judge Kurukshetra is set aside and the matter is remanded back to the trial Court to pass a fresh order to frame the charges in view of the settled legal position and facts of the case as are discussed above. The parties are directed to appear before the learned trial Court on the date already fixed in the trial.

22.04.2024

Yogesh

Whether speaking/reasoned:-
Whether reportable:-

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No