

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48517-2023 (O&M)
Reserved On.: 30.01.2024
Pronounced On: 05.02.2024

Manjit Singh and OthersPetitioners
Vs.
State of PunjabRespondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. C.S. Jattana, Advocate for
Mr. G.B.S. Gill, Advocate for
the petitioners.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. Mohd. Yousaf, Advocate
for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., prayer is made to quash order dated 16.08.2023 (Annexure P-6) passed by learned Sessions Judge, Sangrur, dismissing the revision filed by the petitioners against order dated 12.08.2022 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Malerkotla in a case arising out of FIR No.25 dated 17.03.2015 registered under Sections 307, 324, 148, 149 of the IPC (Sections 307, 148, 149 of the IPC were deleted later on & Section 201 of the IPC added later on) registered at Police Station Amargarh, District Sangrur (Annexure P-1).

2.1 FIR was lodged on 17.03.2015 on the complaint of Manjit Singh son of Gajjan Singh resident of Bhullaran, Police Station Amargarh, as per which, Himmat Singh is the friend of the complainant. Accused (*petitioners*

CRM-M-48517-2023 (O&M)

herein) Manjit Singh son of Dalip Singh, Jaswant Singh son of Dalip Singh, Harinder Singh son of Manjit Singh have land dispute with Himmat Singh. As per complainant, in the capacity of Panch in Village panchayat, he used to help Himmat Singh, accused were having grudges against them.

2.2 It was alleged further by the complainant that on that day i.e. 17.3.2015 at about 5:00 pm, he and Himmat returned to the village from Malerkotla. After dropping him from the car at the chowk near his house, Himmat Singh left. At the chowk, his neighbours – accused Manjit holding a kirpan, accused Harinder armed with kirch, besides accused Ranjit & Jaswant Singh Ss/o Dalip Singh, and Sona s/o Jaswant armed with lathis were present. Ranjit Singh gave lalkara not to spare him (complainant) and then Manjit son of Dalip inflicted kirpan blow with an intention to kill him, which landed on his head. At the same time, Harinder inflicted kirch blow, which landed on his chest. He fell down and then Jaswant Singh & Sona gave him fist and kick blows. He raised alarm. His brother Raghvir Singh, and Satnam Singh reached there and with great difficulty saved him from the clutches of the assailants, who fled away along with their weapons. On the aforesaid statement, FIR in question was registered.

3.1 It is contended by learned counsel for petitioners that injuries on the person of complainant Manjit son of Gajjan were declared simple in nature and not dangerous to life. Besides, Smt. Baldev Kaur the wife of petitioner No.1 Manjit moved an application dated 18.03.2015 alleging false implication of the petitioner. Enquiry was conducted by DSP Amargarh, who found the three petitioners Manjit son of Dalip, Jaswant son of Dalip and Harinder son of

CRM-M-48517-2023 (O&M)

Manjit besides Sona to be innocent. Section 307, 148, 149 of the IPC were deleted. Only offence under Section 324 of the IPC was found to have been made out against Ranjit Singh @ Fauji (who died on 14.12.2016). Challan was filed only against Ranjit Singh before the Trial Court.

3.2 Learned counsel contends that on an application moved by the complainant Manjit son of Gajjan, under Section 319 Cr.P.C., petitioners and Sona @ Gurinder Singh were summoned vide order dated 06.10.2016 to face trial under Section 324, 148, 149 of the IPC. However that order was set aside in the revision by learned Additional Sessions Judge, Sangrur vide order dated 15.10.2016 and the matter was remanded back to learned Magistrate to decide it afresh. Thereafter, another application under Section 190(1)(c) Cr.PC was moved by the complainant, which was allowed on 30.11.2019 and again the petitioners were summoned. Petitioners filed revision against this order dated 30.11.2019, which was dismissed on 28.09.2021 by Ld. Additional Sessions Judge, Sangrur.

3.3 Learned counsel further contends that thereafter, learned JMIC, Malerkotla considered the charge and opined vide order dated 12.08.2022 (Annexure P-4) that offence under Section 307 of the IPC was also made out against the petitioners and committed the case to the Court of Sessions. Petitioners applied for bail, which was granted on 31.08.2022 vide Annexure P-5. Aggrieved by the order dated 12.08.2022 of the Trial Court charge-sheeting the petitioners under Section 307 IPC, they filed revision before Court of Sessions but the same has been dismissed by way of impugned order dated 16.08.2023 (Annexure P-6). Learned Sessions Court has now framed the

CRM-M-48517-2023 (O&M)

charges against the petitioners under Section 307/34 and 201 of the IPC vide order dated 16.08.2023 (Annexure P7).

4.1 It is contended by learned counsel that the impugned order dated 12.08.2022 as passed by learned JMIC, Malerkotla; and order dated 16.08.2023 passed by learned ASJ Sangrur, confirming the aforesaid order, are without due application of mind, because there was no medical opinion so as to attract Section 307 IPC. At no point of time, any of the injury on the person of complainant was declared dangerous to life.

4.2 Learned counsel for the petitioners also drawn attention towards enquiry report dated 13.06.2015 (Annexure P-9) of DSP Sub-Division Amargarh, whereby petitioners were found to be innocent and that only co-accused Ranjit @ Fauji was found to have committed offence under Section 324 of the IPC.

5. Opposing the petition, learned State counsel defended the impugned orders by submitting that on the basis of material on record, the petitioners have been rightly charge-sheeted under Section 307/34/201 IPC. Learned State counsel further submits that only prima facie case is required to be seen at the stage of consideration on charge. Attention is further drawn towards the fact that against the order passed by learned Magistrate, petitioners have availed their remedy by filing a revision before the Court of Sessions, which was dismissed vide order dated 16.08.2023 and therefore, under the garb of the petition under Section 482 Cr.P.C., the second revision is not maintainable.

6. I have considered submissions of both the sides and have perused

CRM-M-48517-2023 (O&M)

the record carefully.

7. Whether this petition, which in fact is a second revision under the garb of Section 482 Cr.PC, is maintainable? Section 397Cr.P.C. provides about the exercise of powers of revision by the High Court or the Sessions Judge.

“397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

8. The language of Clause (3) is quite clear with no ambiguity. If a person has chosen to file a revision either before the High Court or before the Sessions Court under sub-Section (1), said person cannot be allowed to prefer further application to the other Court. In other words, a person aggrieved by any order or proceedings can choose his remedy by way of revision either before High Court or the Sessions Court. Once he has availed the remedy before either of the Court, he is precluded from approaching the other forum.

CRM-M-48517-2023 (O&M)

9. In ***Rajan Kumar Manchanda v. State of Karnataka, 1990 (Supp)***

SCC 132, it has been held Hon'ble Supreme Court, as under:

“A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted, every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

10. In ***Krishnan & Anr vs Krishnaveni & Anr, 1997 AIR 1997 SC***

987, a three judges bench of Hon'ble Supreme Court, dealt with the issue and held as under:

“The object of Section 482 and the purpose behind conferring the revisional power under section 397 read with section 401 upon the High court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to met out justice or to correct irregularity of the procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 462 . The Power of the High court therefore is very wide, However, High Court must exercise

such power sparingly and cautiously when the sessions judges has simultaneously exercised revisional power under Section 397 (1) however, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

It was further held as under:

*“Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, **when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power** and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public*

CRM-M-48517-2023 (O&M)

justices can be ensured only when expeditious trial is conducted.”

[bold portion emphasized by this court]

11. This issue also came up for consideration before Delhi High Court in ***Surender Kumar Jain vs. State, 2012 SCC OnLine Delhi 572*** and it was observed as under;

*“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr.P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 482 Cr.P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in **Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551, State of Orissa Vs. Ram Chander Aggarwal, AIR SC 87, Raj Kapoor Vs. State (Delhi Administration) 1980 Cri.L.J. 202, Krishnan & Anr. Vs. Krishnaveni & Anr and Kailash Verma Vs. Punjab State Civil Supplies Corporation and Anr (2005) 2 SCC 571.**”*

[underlined & bold portion emphasized by this court]

12. Thus, the legal position as above would make it clear that though High Court enjoys inherent power under Section 482 Cr.P.C. and supervisory power under Section 483 Cr.PC to entertain petitions even in those cases, where a revision has earlier been filed before the Court of Sessions but said

CRM-M-48517-2023 (O&M)

power is to be exercised sparingly. It will depend upon facts and circumstances of each case, as to whether impugned order brings about a situation, which is an abuse of the process of Court, or there is serious miscarriage of justice, or where mandatory provisions of law were not complied with, or if there was some apparent mistake committed by the Revisional Court.

13. Coming to the facts of present case, in the order dated 12.08.2022 (Annexure P-4) as passed by learned Judicial Magistrate 1st Class, Malerkotla, it has been observed that two injuries were found on the person of complainant Manjit son of Gajjan as per the MLR. The first injury was an incised wound of 0.75 x 0.25 cm on the left side of the chest of the injured; whereas the second injury was also an incised wound of 1.5 x 2.5 cm on the head; and that these injuries are attributed to have been caused by accused Manjit son of Dalip with a sword and by Harinder Singh with a knife respectively and thus, prima facie intention of the accused, gathered from the circumstances, appeared to be to kill the complainant. After making these observations, it was held that as per the prima facie material on record, offence falls within the mischief of Section 307 of the IPC.

14. The aforesaid reasoning of learned JMJC has been sustained by learned Sessions Judge, Sangrur in his impugned order dated 16.08.2023 (Annexure P-6), who also noted the nature of injuries on the person of injured Manjit son of Gajjan, the kind of weapon used and the seat of injuries, indicating the intention of the accused party to kill the complainant.

15. Sessions Judge while exercising power of revision under Section 397 Cr.PC, against framing of the charge had limited scope to interfere. In

CRM-M-48517-2023 (O&M)

State through Dy.S.P Vs. R. Soundirarasu etc. 2022 LiveLaw (SC) 741, while discussing the scope of powers of revisional court, Hon'ble Supreme Court held as under:

"75. In Munna Devi v. State of Rajasthan & Anr., (2001) 9 SCC 631, this Court held as under:-

"3.....The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.

77. This Court in Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation, (2018) 16 SCC 299, has held that interference in the order framing charges or refusing to discharge is called for in the rarest of rare case only to correct the patent error of jurisdiction.

16. In the present case, the impugned order of learned Session Judge is challenged on the ground that there is no medical opinion so as to invoke Section 307 of the IPC and secondly, the enquiry report of DSP has not been taken into consideration.

CRM-M-48517-2023 (O&M)

17. This Court finds no merit in any of the aforesaid contentions. The enquiry report Annexure P-9 would reveal that DSP Sub Division Malerkotla preferred to ignore the statements of injured - complainant and the other eye-witnesses and by relying upon statements of some other witnesses, who were not even stated to be the eye-witnesses, declared the petitioners and Sona Singh to be innocent. The Court was not at all bound to rely upon the said enquiry report.

18. Coming to the absence of any medical opinion regarding the nature of injury, it is suffice to say that at the stage of considering the charge, only prima facie material is required to be seen. Further, it is not at all necessary that in order to invoke Section 307 IPC, there must be a medical opinion declaring injury to be dangerous to life.

19. In order to see that whether there is an attempt to murder so as to attract section 307 IPC, it is required that the act must be done with such intention or knowledge and done under such circumstances that if death be caused by that act, offence of murder would emerge. Intention or knowledge of accused must be such as is necessary to constitute murder. Since mens rea (intention or knowledge) precedes the act, so said mens rea has to be gathered from all the circumstances. There is no golden scale to judge intention of the accused, same being hidden in his mind. Therefore, it is to be deduced from various circumstances. Certain guiding factors in this regard can be nature of injury, part of body involved, kind of weapon used, number of injuries, time and place of occurrence, preparation made, manner of occurrence, motive and consequence of the injuries. Reference can be made to **Ajay Pal vs. State of**

CRM-M-48517-2023 (O&M)

Punjab 1999(1) RCR (Criminal) 437 and State of Haryana Vs. Babu Singh 1987(1) RCR (Criminal) 117.

20. In fact, it is not even essential that bodily injury capable of causing death must be inflicted, so as to sustain conviction under section 307 IPC. For example, if a shot is fired with an intention to kill the victim but it misses the target, conviction u/s 307 IPC would be justified, even though no bodily injury capable of causing death is inflicted. Reference can be made to **Om Parkash vs. State of Punjab, AIR 1961 SC 1782**. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof, such act being proximate to the crime intended. Reference can be made to **Sagayam Vs. State of Karnataka 2000 (4) SCC 454 [SC]**. In **State of Madhya Pradesh Vs. Saleem alias Chamaru (2005) 5 SCC 554**, it has been held by Hon'ble Supreme Court that an accused charged under section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. It was observed that bodily injury may not be sufficient to cause death. Accused may be convicted under section 307 IPC if he had intention to cause death. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. Intention or knowledge is the question of fact and would depend on facts of a given case. Same view was taken by Hon'ble Supreme Court in **Vasant Vithu Yadav v State 2004 (9) SCC 31**.

21. Having regard to the entire discussion of the legal as well as factual matrix of the case, as above, it is held that Ld. Sessions Judge while dismissing the revision against order dated 12.08.2022 (Annexure P-4) passed

CRM-M-48517-2023 (O&M)

by learned Judicial Magistrate 1st Class, Malerkotla, vide order dated 16.08.2023 (Annexure P-6) has not committed any error. As such, this court finds absolutely no merit in the present revision and so, the same is hereby dismissed. For removal of doubts, it is made clear that Ld. Trial court will not be influenced by any observations made by this court in this order, while deciding the case on merits.

(DEEPAK GUPTA)
JUDGE

February 05, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No