

“after Hearing Respective Contentions of Both Vs.

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Court : Punjab and Haryana

Decided On : Jul-16-2013

Appellant : “after Hearing Respective Contentions of Both

Judgement :

CRM not M-23065 of 2011 (O&M) -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH (230) CRM not M-23065 of 2011 (O&M) Date of decision:

16. 07.2013.

Surinder Singh and othersPetitioners Versus State of PunjabRespondent
CORAM: HON'BLE MRS.JUSTICE SABINA Present: Mr.J.S.Chahal, Advocate for the petitioneRs.Mr.Deep Singh, DAG, Punjab.

**** SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') challenging the order dated 08.09.2010 (Annexure P-5) whereby Trial Court ordered the amendment of the charges and charge was also ordered to be framed against the petitioners under Section 452 of the Indian Penal Code, 1860 (in short 'IPC') and the order passed by the Court of Revision dated 05.07.2011 whereby order dated 08.09.2010 passed by the Trial Court was upheld.

Learned counsel for the petitioners has submitted that the Trial Court had erred in ordering the framing of the charge against the petitioners under Section 452 IPC.

Petitioner had earlier filed an application seeking the same relief which was dismissed by Sandeep Sethi 2013.07.23 10:55 I attest to the accuracy and integrity of this document CRM not M-23065 of 2011 (O&M) -2- the Trial Court.

After thorough investigation of the case, challan was not presented against the petitioners qua commission of offence punishable under Section 452 IPC.

Learned State counsel, on the other hand, has opposed the petition.

In the present case, challan was presented against the petitioners under Section 323, 324, 506 and 34 IPC.

Although FIR No.338 dated 01.11.2006 was registered against the petitioners at Police Station Jagraon under Sections 452, 324, 506 and 34 IPC but during investigation, it had transpired that no offence could be said to have been committed by the petitioners under Section 452 IPC.

After examination-in-chief of complainant, prosecution moved an application under Section 216 Cr.P.C. for framing of the charge against the petitioners under Section 452 IPC.

The said application was dismissed by the Trial Court vide order dated 14.01.2009 (Annexure P-3). A perusal of the said order reveals that the Trial Court was influenced with the fact that complainant had yet not been cross-examined, hence, at that stage, there was no material available on record to add the offence under Section 452 IPC.

After completion of cross-examination of the complainant Mandeep Kaur, another application was moved by the prosecution to frame charge qua commission of offence punishable under Section 452 IPC.

The Trial Court vide impugned order dated 08.09.2010 allowed the said application as it was of the opinion that a reading of the complete statement of PW1 Mandeep Kaur revealed that prima facie offence Sandeep Sethi 2013.07.23

10:55 I attest to the accuracy and integrity of this document CRM not M-23065 of 2011 (O&M) -3- punishable under Section 452 IPC could be said to have been committed.

Aggrieved against the said order petitioners preferred a revision petition and the same was dismissed by the Court of Revision vide impugned order dated 05.07.2011 (Annexure P-6). The Court of Revision while dismissing the revision petition has observed as under:- After hearing respective contentions of both the sides and also having gone through the record carefully it is found that the instant revision-petition filed by Surinder Singh, Jagtar Singh and Pritpal Singh revisionist-petitioners merits dismissal.

There is no reason to interfere with the well reasoned order rendered by the learned trial court.

Admittedly the present FIR No.338 dated 01.11.2006, has been registered on the statement of complainant Mandeep Kaur u/s 452, 324, 323, 506, 34 IPC.

Though during the investigation, offence u/s 452 IPC was deleted but complainant Mandeep Kaur while appearing in the witness box as PW1 has categorically deposed that on 31.10.2006 accused Surinder Singh, Jagtar Singh and Pritpal Singh committed house trespass while entering into their house and caused injuries to herself as well as her father, mother and brother.

Moreover, site plan presented by Investigating Officer shows that occurrence took place inside the house.

Thus prima facie, there is sufficient evidence on the file to frame charge u/s 452 IPC against the accused/revisionists.

Further it is settled principle of law that at the stage of framing of charge, the prosecution evidence is not to be critically and minutely analyzed Sandeep Sethi 2013.07.23 10:55 I attest to the accuracy and integrity of this document CRM not M-23065 of 2011 (O&M) -4- because no final order with regard to acquittal and conviction of the accused is to be passed at the stage of framing of charge.

Though learned counsel for accused/petitioner while referring the above mentioned rulings contended that Judicial Magistrate cannot review its own order.

Whereas in the present case, the learned JMJC virtually reviewed the order dated 14.01.2009 passed by his predecessor, therefore, same is not maintainable.

But in the light of facts and circumstances of the present case, rulings cited by the learned counsel for revisionist-petitioners are not applicable to the facts of the present case and are quite distinguishable as earlier vide order dated 14.1.2009 Smt.

Mandeep Kaur Bedi, the then learned SDJM, Jagraon dismissed the earlier application moved by the learned APP for the State for the same purpose on the ground that since at that time, the complainant was only examined in chief and she was not cross-examined at that stage.

Therefore, court held that there is no evidence available on record to frame charge u/s 452 IPC against the accused and said application was dismissed.

But thereafter, after cross- examination of the complainant, a fresh application was moved by learned APP for the State and from the conjoint reading of examination-in-chief as well as cross- examination of complainant, prima facie offence u/s 452 IPC is made out against the present revision-petitions and charge u/s 452 IPC has been rightly framed against all the accused.

There is no illegality or irregularity in the impugned order dated 08.09.2010 vide which charge u/s 452 IPC has been added in the charge sheet.

So this criminal revision petition is devoid of merits, is dismissed while confirming the impugned order of the learned trial court dated 8.9.2010.

Revision file be consigned to the Sandeep Sethi 2013.07.23 10:55 I attest to the accuracy and integrity of this document CRM not M-23065 of 2011 (O&M) -5- record room and lower court record be sent back alongwith the copy of this order.

The reasons given by the Court of Revision, while dismissing the revision petition filed by the petitioners are sound reasons.

In the present case, the impugned order dated 08.09.2010 passed by the Trial Court cannot amount to review as the charge with regard to commission of offence punishable under Section 452 IPC had been ordered to be framed after the statement of the complainant was completed.

On earlier occasion, cross-examination of the complainant had not been completed and due to this reason, application for framing of charge under Section 452 IPC was dismissed.

It is a settled proposition of law that the petitioner cannot invoke jurisdiction of this Court under Section 482 Cr.P.C. after dismissal of his revision by the Sessions Court as it would amount to a second revision.

However, in a case of grave injustice, this Court can interfere under Section 482 Cr.P.C. In the present case, no grave miscarriage of justice has occurred which would warrant interference by this Court under Section 482 Cr.P.C. Hence, no ground for interference is made out.

Dismissed.

(SABINA) JUDGE July 16, 2013 sandeep sethi Sandeep Sethi 2013.07.23 10:55 I attest to the accuracy and integrity of this document

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