
(2010) 09 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-19386 of 2010

Paramjit Singh

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) 09 P&H CK 0071

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant; V.P.S. Sidhu, AAG, Punjab and Abinashi Singh with Rama Sharma, Advocates for Respondent No. 2 in person, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—This petition has been filed u/s 482 of the Code of Criminal Procedure ("Cr.P.C." - for short) seeking quashing of F.I.R. No. 29 dated 29.3.2010 (Annexure P1) registered at Police Station Subhanpur District Kapurthala for the offences under Sections 307 and 452 Indian Penal Code ("I.P.C." - for short); besides, Section 27 of the Arms Act and all subsequent proceedings arising therefrom in view of the compromise (Annexure P-2).

2. Mr. Abinashi Singh, Advocate has put in appearance along with Smt. Rama Sharma (respondent No. 2) in person. Smt. Rama Sharma (respondent No. 2) who is identified by her counsel submits that she has compromised the matter with the petitioner and she does not want to pursue the matter any further. It is also stated that she has compromised the matter of her own free will and desire and without any kind of pressure or undue influence of anyone. The Vakalatnama filed by Mr. Abinashi Singh complainant/respondent No. 2 and the affidavit of Smt. Rama Sharma (respondent No. 2) dated 13.4.2010 (in vernacular) have been filed in Court today and the same are taken on record. It is accepted by Smt. Rama Sharma that the affidavit dated 13.4.2010 bears her signatures.

3. The F.I.R. in the case has been registered on the statement of Smt. Rama Sharma, complainant/respondent No. 2. It is alleged by the complainant that she is running a shop for the last 10 years and the petitioner used to come for taking medicines. They had family relations and joined marriage ceremonies in the family. The complainant/respondent No. 2 had been going to America and England for the last 2-3 years on visitor Visa and on 8.3.2010 after visiting America she had returned. The petitioner had insisted to take him to America on visa along with her but the complainant/respondent No. 2 refused him. The petitioner then threatened the complainant/respondent No. 2 to kill her. The complainant told the petitioner that she could not take him with her. On this he (petitioner) threatened her and abused her on telephone. At about 12.30 p.m. on 29.3.2010 the complainant was present in her house and both her sons namely Ravinder Kumar and Arun Sharma were also present. The petitioner who had a double barrel gun which was loaded, under the influence of liquor entered the house of the complainant after opening the gate. After seeing the petitioner's condition, the sons of the complainant told him to go out. The petitioner, however, asked them to call their mother (respondent No. 2) as he wanted to kill her. The complainant was hearing the same inside. In the meantime, the petitioner fired from his gun with an intention to kill them and the complainant and her sons saved themselves running away. On hearing the noise of bullet, persons from the neighborhood gathered there. Then the petitioner along with his gun fled away from the house of the complainant. No injury has been attributed to be caused to any of the parties. The parties have now amicably resolved their dispute. Smt. Rama Sharma (respondent No. 2) has deposed her affidavit dated 13.4.2010 (Annexure P2), the original of which has been filed in Court today and is taken on record. The challan in the case has been Filed and the charges have not been framed.

4. In respect of F.I.R. which is registered for an offence u/s 307 I.P.C., the F.I.R. is not normally to be quashed as it is a serious offence. However, it is to be determined and ascertained in the facts and circumstances of the case whether the offence u/s 307 I.P.C. is indeed made out. The offence u/s 307 I.P.C. has been attributed primarily because the petitioner Paramjit Singh is stated to have fired with his double barrel gun. No injury is stated to have been caused to any one. Merely, because the petitioner is alleged to have fired with his double barrel gun by itself cannot in the facts and circumstances be said to be such an act that the offence u/s 307 I.P.C. can be said to be made out. The said offence would be made out if there is an intention to kill. In the facts and circumstances of the present case there is no intention on the part of the petitioner Paramjit Singh to commit an offence of murder or to kill anyone. In order to consider whether the offence u/s 307 I.P.C. is made out or not, the said provision may be noticed. Section 307 I.P.C. reads as follows:

307. Attempt to murder:- Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempt by life convicts - When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

5. An aspect which is to be borne in mind in order to ascertain whether an offence u/s 307 I.P.C. is made out is the intention or knowledge. Besides, intention or knowledge of the accused must be such as is necessary to constitute murder. The first part of Section 307 I.P.C. envisages such intention or knowledge and such circumstances that the act done by the offender would cause death and he would be guilty of murder. This would constitute an attempt of murder. The second part relates to causing of hurt by such act that is of having intention or knowledge and under such circumstances that by such an act death would be caused and the offender would be guilty of murder. This also constitutes an offence of attempt to murder. Therefore, the substance of the offence, is the intention or knowledge that the act which is done is such that death would be caused and the offender would be guilty of murder but death is not actually caused.

6. In *Sarju Prasad Vs. State of Bihar*, it was held by the Hon'ble Supreme Court that to attract the provisions of Section 307 I.P.C., the prosecution is to establish the intention of the accused that the injury which was caused was one of the kinds referred in Section 300 I.P.C. and unless the prosecution discharges the burden, the offence u/s 307 I.P.C. cannot be brought home. A knife blow was caused in the said case on a vital region of the injured but no vital organ of the injured was cut on account of the injury. The accused was convicted by the High Court for an offence u/s 307 I.P.C. It was held by the Hon'ble Supreme Court that the state of mind has to be deduced from the surrounding circumstances. Besides, also the existence of a motive to cause death would be a relevant consideration. Taking the totality of the circumstances, it was held that there was no intention of murder nor an inference could be drawn that there was an intention to cause injury which may result in death. Accordingly, it was held that the prosecution had failed to establish that the offence which was committed fell squarely u/s 307 I.P.C. and in the opinion of their Lordships, it amounted to an offence u/s 324 I.P.C. In *Kundan Singh Vs. State of Punjab*, simple injuries were received from gun shots fired from the gun by the accused. The injured were in the courtyard of their house, when the accused therein opened fire. It was held that the accused could not have intended to injure them. The conviction of the appellant in the said case for the offence u/s 307 I.P.C. was held to be not justified.

7. Therefore, merely because the petitioner Parmjit Singh is stated to have fired, an inference cannot be drawn that he had the intention to commit the offence of

murder which would amount to offence of attempt o murder u/s 307 I.P.C. Besides, the parties having amicably resolved their dispute which is purely personal in nature close associates who had been joining the marriage of ceremonies of each other at one point of time. Therefore, it would be just and expedient to quash the F.I.R. so that there is peace and goodwill amongst the close associates.

8. In Madan Mohan Abbot Vs. State of Punjab, , it was observed by the Supreme Court as follows:-

We need to emphasis that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

9. A larger Bench of this Court in Kulwinder Singh and others v. State of Punjab and another, 2007 (3) RCR (Cr.) 1052 (5 Judges) has observed as follows:

27. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment can whittle down the power u/s 482 of the Cr.P.C.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behavior. It is the soul of justice and if the power u/s 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers u/s 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.

10. In view of the above, the present criminal miscellaneous petition is allowed and F.I.R. No. 29 dated 29.3.2010 (Annexure P-1) registered at Police Station Subhanpur District Kapurthala for the offences under Sections 307 and 452 I.P.C.; besides, Section 27 of the Arms Act and all consequential and subsequent proceedings in pursuance thereof shall stand quashed.