



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No.6557/2024
CNR: RJHC020837232024 | URN: CRLMP / 13302U / 2024



1. Liyakat Ali S/o Noor Mohammed, Aged About 67 Years, R/o Ward No. 34 Mohalla Khora Jhunjhunu
2. Mohd. Vashim S/o Liyakat Ali, Aged About 34 Years, R/o Ward No. 34 Mohalla Khora Jhunjhunu
3. Sahil Khan S/o Liyakat Ali, Aged About 23 Years, R/o No. 34 Mohalla Khora Jhunjhunu (Raj.)
4. Ashif S/o Munshi Khan, Aged About 28 Years, R/o Kalusar Tehsil Sardarsahar District Churu
5. Sanjay Singh S/o Jai Singh, R/o Khitado Ka Bas Tehsil Malsisar District Jhunjhunu At Present Ward No. 1 Jhunjhunu

----Petitioners

Versus

1. State Of Rajasthan, Through P.P.
2. Dharmendra Singh S/o Shri Chand Bana, Aged About 50 Years, R/o Bas Chudela Tehsil Bissau District Jhunjhunu (Raj.)

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No.6799/2024
CNR: RJHC020863452024 | URN: CRLMP / 13768U / 2024

Dharmendra Singh Son Of Srichand Bana, Aged About 50 Years, Resident Of Bas Chudela Tehsil Bisau District Jhunjhunu.

----Petitioner

Versus

1. State Of Rajasthan, Through The P.P.
2. Liyakat Ali Son Of Noor Mohammed, Resident Of Ward No. 34 Mohalla Khora Jhunjhunu.
3. Mohd. Vasim S/o Liyakat Ali, Aged About 34 Years, Resident Of Ward No. 34 Mohalla Khora Jhunjhunu.
4. Sahil Khan Son Of Liyakat Ali, Aged About 23 Years, Resident Of Ward No. 34, Mohalla Khora Jhunjhunu.
5. Asif Son Of Munshi Khan, Aged About 28 Years, Resident



Of Kalusar Tehsil Sardarshahar District Churu.

6. Sanjay Singh Son Of Jai Singh, Aged About 26 Years,
Resident Of Khichadon Ka Baas Tehsil Malsisar District
Jhunjhunu, Present Ward No. 1, Jhunjhunu.

-----Respondents



For Petitioner(s) : Mr. Brij Bhushan Ojha
For Respondent(s) : Mr. Manvendra Singh Choudhary, PP
Mr. Jaswant Singh &
Mr. Namo Narayan Meena for
Mr. Harendra Singh Sinsinwar

JUSTICE ANOOP KUMAR DHAND

Order

22/09/2026

Reportable

1. The instant criminal misc. petitions are listed before this Court in pursuance of the directions issued by the Hon'ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan** (Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon'ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder, rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.



3. Both these criminal misc. petitions have been preferred against the impugned order dated 11.09.2024, passed by the Ld. Additional Sessions Judge No. 2, Jhunjhunu, by which cross revision petitions submitted by the accused-petitioners and respondent-complainant respectively have been rejected and the order dated 07.02.2024 passed by the Ld. Chief Judicial Magistrate, Jhunjhunu (for short 'CJM') has been upheld.

4. By passing the order dated 07.02.2024, the Ld. CJM has taken cognizance against the accused-petitioners, namely Liyakat Ali, Mohd. Vashim, Sahil Khan, Ashif and Sanjay Singh, for the offences punishable under Sections 147, 148, 149, 458, 304 Part-II IPC.

5. Learned counsel appearing on behalf of the accused-petitioners, Mr. Brij Bhushan Ojha, Adv., submits that as per the case of the prosecution, the date of alleged incident is 20.09.2022, whereas the deceased-Vijay Singh passed away on 28.09.2022. Learned counsel submits that as per the post-mortem report, in the opinion of the Doctor, the cause of death of the deceased-Vijay Singh was cardiac arrest and the time period for the aforesaid cardiac arrest was four to five days prior to his death. He submits that under these circumstances, the deceased-Vijay Singh did not die due to injuries, if any, sustained by him in the alleged incident dated 20.09.2022. Learned counsel submits that it is an admitted case of the prosecution that the deceased-Vijay Singh was seen in the company of one-Indraj Singh, after the injuries sustained by him in the alleged incident. Hence, by no stretch of imagination, it cannot be believed that the deceased-Vijay Singh has died on account of the injuries, if any, sustained



by him on 20.09.2022. He submits that all these facts were appreciated by the Investigating Agency and accordingly, Final Report (Negative) was submitted in favour of the accused-petitioners, against which a protest petition was filed by the respondent-complainant namely Dharmendra Singh. The Ld. CJM, while deciding the protest petition, has taken cognizance against the accused-petitioners under Section 147, 148, 149, 458 and 304 Part-II IPC, without there being any evidence against the accused-petitioners. He submits that the reasons for the Final Report (Negative) submitted by the Investigating Agency have not been considered by the Ld. CJM, while taking cognizance against the accused-petitioners vide order dated 07.02.2024, therefore, the entire proceedings initiated against the accused-petitioners stand vitiated. Assailing the validity of the aforesaid cognizance order, the accused-petitioners filed a revision petition before the Revisional Court, however, the same was rejected vide impugned order dated 11.09.2024. Hence, under these circumstances, the accused-petitioners have approached this Court for quashing the order of cognizance dated 07.02.2024 and subsequent order dated 11.09.2024 passed by the Revisional Court.

6. In support of his contentions, counsel for the petitioners has placed reliance upon the following orders:

1. **Manisha Jain Vs. State of Rajasthan & Ors.**, while deciding **S.B. Criminal Misc. Petition No.2195/2014** on 10.06.2026 by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur;
2. **Nopa Ram & Ors. Vs. State of Rajasthan & Anr.**, while deciding **S.B. Criminal Misc. Petition**



No.244/2021 on 19.11.2024 by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur; and

3. **Jitha Sanjay & Ors. Vs. State of Kerala & Anr.**, while deciding **CRL. MC. No.2016/2023** on 18.06.2024 by the Kerala High Court.

7. *Per contra*, learned counsel appearing on behalf of the respondent-complainant opposed the arguments raised by learned counsel for the accused-petitioners and submitted that as per the post-mortem report, the deceased-Vijay Singh has sustained injuries on various parts of his body, i.e. chest, legs and thighs. Learned counsel submits that the deceased died on account of the injuries inflicted by the accused persons by the blow of *lathi* and *danda*, which were sufficient to cause death. Learned counsel submits that presence of the deceased-Vijay Singh at the place of the occurrence has been captured in a CCTV footage and the same was produced in the cross-case submitted by the complainant side. Hence, under these circumstances, it cannot be believed that the deceased-Vijay Singh was not present at the place where the alleged incident took place. He further submits that the instant case is one where the offence under Section 302 IPC is attracted and at the stage of taking cognizance, Ld. CJM was not expected to express his opinion about the *prima facie* case, as to whether the offence under Section 302 IPC is made out or not. He submits that as the deceased-Vijay Singh passed away because of the alleged incident, therefore, the intention of the accused persons for causing the alleged incident is not required to be looked into by the Ld. CJM, at the initial stage, i.e. order of taking cognizance dated 07.02.2024. Under such circumstances, the respondent-



complainant also filed a revision petition before the Revisional Court and the said revision petition was also rejected vide impugned order dated 11.09.2024.

8. In support of his contentions, counsel for the respondent-complainant has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Ghulam Hassan Beigh Vs. Mohamman Maqbool Magrey & Ors.** reported in **(2022) 12 SCC 657.**

9. Ld. Public Prosecutor opposed the arguments raised by learned counsel appearing on behalf of the accused-petitioners as well as the respondent-complainant and submitted that the cognizance order dated 07.02.2024 passed by the Ld. CJM and the order dated 11.09.2024 passed by the Revisional Court are just and proper, which do not require any interference of this Court. Hence, both the criminal misc. petitions are liable to be rejected.

10. Heard and considered the submissions made at the Bar and perused the material available on the record.

11. Perusal of the record indicates that for the alleged incident which took place on 20.09.2022, an FIR was registered with the Police Station Kotwali by the respondent-complainant, wherein it was alleged that the accused persons assaulted the deceased-Vijay Singh and caused several injuries on various parts of his body. A cross-complaint for the aforesaid incident has also been lodged by the accused side against the complainant side. After carrying out a thorough investigation, the Police submitted Final Report (Negative) on the ground that the cause of death of the deceased-Vijay Singh was cardiac arrest.



12. Against the aforesaid Final Report (Negative), the respondent-complainant submitted a protest petition and on the basis of the evidence available on the record, the Ld. CJM took cognizance against the accused-petitioners under Sections 147, 148, 149, 458 and 304 Part-II IPC. The Ld. CJM, at the time of passing the impugned order dated 07.02.2024, has taken into account the offence of culpable homicide and murder, as defined under Sections 299 and 300 IPC respectively and thereafter, on the basis of the injuries sustained by the deceased-Vijay Singh and the opinion expressed by the Doctors, as referred, the Ld. CJM was of the view that the deceased-Vijay Singh has not sustained any injury on any of the vital part of his body and accordingly arrived at the conclusion that the injuries sustained by the deceased-Vijay Singh were not sufficient enough in the ordinary course of nature to cause death.

While expressing the aforesaid opinion, the Ld. CJM took cognizance against the accused under Section 304 Part-II IPC, along with other offences under Sections 147, 148, 149, 458 IPC vide order dated 07.02.2024.

13. This fact is not in dispute that the deceased-Vijay Singh has passed away, but the cause of his death has been seriously disputed by the counsel appearing on behalf of the rival sides. It is the case of the accused-petitioners that the cause of death of the deceased-Vijay Singh was not the injuries, if any, sustained by him on his body on the date of alleged incident, i.e. 20.09.2022, whereas this very fact has been seriously disputed by the counsel for the respondent-complainant, alleging that the deceased-Vijay Singh has sustained multiple injuries on the day when the alleged



incident took place and has passed away on account of the aforesaid injuries.

14. In the considered opinion of this Court, *prima facie* evidence is available on the record to show that the deceased-Vijay Singh was assaulted and he sustained multiple injuries on various parts of his body. Whether those injuries were sufficient in the ordinary course of nature to cause death or not; and Whether it is a case of culpable homicide or murder or not. All these issues could not have been appreciated by the Ld. CJM at the initial stage of taking cognizance, as it is settled proposition of law that at the stage of taking cognizance, only *prima facie* case is required to be seen and the meticulous appreciation of evidence is not required to be done at this initial stage.

15. In case the impugned order passed by the Ld. CJM is allowed to stand as it is, then what would the Trial Court do at the fag end of the trial?

16. The Hon'ble Apex Court has dealt with an identical situation where the cause of death of the deceased was cardiac respiratory failure and on the basis of the medical report of the Doctors, the charges were framed by the Trial Court against the accused under Section 304 Part II IPC. After considering the facts and circumstances of the case and in light of the settled judicial precedent, the aforesaid charge order was quashed by the Hon'ble Apex Court and the matter was remitted to the Trial Court for passing fresh order.

Considering the overall facts and circumstances of the case, the Hon'ble Apex Court in the case of **Ghulam Hassan Beigh (supra)** has held in Paras 29, 30, 31, 32, 33, 34, as under:





"29. What did the trial court do in the case on hand? We have no doubt in our mind that the trial court could be said to have conducted a mini trial while marshalling the evidence on record. The trial court thought it fit to discharge the accused persons from the offence of murder and proceeded to frame charge for the offence of culpable homicide under Section 304 IPC by only taking into consideration the medical evidence on record. The trial court as well as the High Court got persuaded by the fact that the cause of death of the deceased as assigned in the post-mortem report being the "cardio respiratory failure", the same cannot be said to be having any nexus with the alleged assault that was laid on the deceased. Such approach of the trial court is not correct and cannot be countenanced in law.

30. The post-mortem report, by itself, does not constitute substantive evidence. Whether the "cardio respiratory failure" had any nexus with the incident in question would have to be determined on the basis of the oral evidence of the eyewitnesses as well as the medical officer concerned i.e. the expert witness who may be examined by the prosecution as one of its witnesses.

31. To put it in other words, whether the cause of death has any nexus with the alleged assault on the deceased by the accused persons could have been determined only after the recording of oral evidence of the eyewitnesses and the expert witness along with the other substantive evidence on record. The postmortem report of the doctor is his previous statement based on his examination of the dead body. It is not substantive evidence. The doctor's statement in court is alone the substantive evidence. The post-mortem report can be used only to corroborate his statement under Section 157, or to refresh his memory under Section 159, or to contradict his statement in the witness box under Section 145 of the Evidence Act, 1872. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of



science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.

32. The prosecution should have been given opportunity to prove all the relevant facts including the post-mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no serious injuries were noted in the post-mortem report, the death of the deceased on account of "cardio respiratory failure" cannot be said to be having any nexus with the incident in question.

33. Whether the case falls under Section 302 or 304 Part II IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post-mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

34. We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. 'Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by the prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the





subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.”



17. In the present matter, the Ld. CJM, while passing the impugned order dated 07.02.2024, has expressed its opinion that looking to the injuries sustained by the deceased-Vijay Singh, which were found to be caused by giving *lathi* and *danda* blows, and were not found to be sufficient in the ordinary course of nature to cause death and were also not on the vital part of the body of the deceased, hence, the accused-petitioners could not be said to have any intention to cause death of the deceased-Vijay Singh.

18. In the considered opinion of this Court, such observation of the Ld. CJM is pre-mature at the initial stage of cognizance in as much as at the initial stage, only *prima facie* case is required to be seen and the meticulous appreciation of evidence is not permissible at this stage.

19. Such finding of the Trial Court is contrary to the settled proposition of law because at the initial stage of taking cognizance, such finding is not expected to be recorded by the Trial Court. It is a matter of trial, wherein the Trial Judge would take into account the entire evidence led by the prosecution and the defence and then and then only, the Trial Court may come to the definite conclusion whether the case falls within the definition of Section 299 or 300 (2) IPC, or whether the accused is required to be convicted under Section 302 or 302 Part II IPC. Therefore, at the initial stage of the trial, recording such a finding amounts to



abuse of the process of law, as it is a premature stage to record such like finding by the Trial Court.

20. Considering the overall facts and circumstances of the case and the evidence available on the record, the impugned order dated 07.02.2024 passed by the Ld. CJM is liable to be and is hereby quashed and set aside and so also the order dated 11.09.2024 passed by the Revisional Court also stands quashed and set aside. The matter is remitted to the Ld. CJM for passing fresh order in accordance with law.

21. Both these criminal misc. petitions submitted by the accused as well as by the complainant stand disposed of, with the aforesaid direction to the Trial Court.

22. Stay applications as well as all pending applications, if any, also stand disposed of.

23. Before parting with this order, it is made clear that this Court has not expressed any opinion on the merits of the case. The observations made by this Court are absolutely *prima facie*, so also irrelevant for the purpose of deciding the legality and validity of the order of taking cognizance. This Court once again clarifies that ultimately it is for the Trial Court to take appropriate decision with regard to the nature of offence at the end of the trial on the basis of evidence led by the parties on the record.

24. Office is directed to forthwith send the record back to the Trial Court.

(ANOOP KUMAR DHAND),J

10-11/Karan