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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR No. 968 of 2024 (O&M)
Date of decision: 25.07.2024

Lal Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

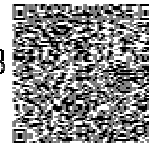
Present:- Mr. Sandeep Chopra, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the order dated 05.03.2024, passed by the Court of Sessions Judge, Sangrur in Sessions Case No. SC-368 of 2023, titled as State vs. Lal Singh and others, arising out of FIR No. 139 dated 12.12.2022, under Sections 148, 452, 308, 323 and 506 of IPC read with Section 149 of IPC, whereby charges under the above said sections were framed against the petitioner and co-accused.
2. Brief facts of the case relevant for the disposal of the present case are that the aforementioned FIR was registered against the petitioner and co-accused on the allegations that on 11.12.2022, they formed membership of an unlawful assembly and in prosecution of common object of that unlawful assembly, they opened an assault upon the complainant/respondent No. 2- Gurwinder Singh and others by criminally trespassing into his house and caused injuries to him with intention to kill him and also criminally

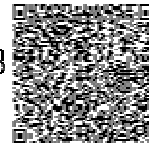
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intimidated him and also committed offence of rioting. During the course of investigation, the petitioner and co-accused were arrested and subsequently they were released on bail. After completion of necessary investigation and usual formalities, challan under the aforesaid sections was filed against the petitioner and co-accused. Thereafter, the impugned order was passed by the trial Court by observing that a case for commission of aforementioned offences had been made out against the accused.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while framing charges, the trial Court did not consider the fact that no case for framing of charge under Section 308 of IPC had been made out against the petitioner. In fact, the petitioner along with co-accused had gone to fetch husk stored in his plot and on reaching there, it was found that Gurwinder Singh and family had raised a wall over the foundation of the plot belonging to the petitioner. When objection was raised as to the construction, then instead of relenting, respondent No. 2 along with his family members opened an assault upon the petitioner and rather, he (petitioner) had sustained injuries in the occurrence and had saved his life by managing to escape from that place. He was admitted to hospital and the petitioner was further referred to Civil Hospital, Sangrur. It is submitted that the statement of the petitioner was recorded by the police on 12.12.2022 and DDR No. 34 was entered but no action was taken upon the same. Rather, the police by colluding with respondent No. 2 lodged the aforementioned FIR falsely against him and wrongly added offence under Section 308 of IPC later on. It is argued that injuries found on the person of the complainant were opined to be simple in nature by a medical

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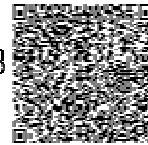


board constituted for that purpose, as per direction issued by a coordinate Bench of this Court in CRM-M-60733-2022 but this fact had not been taken into consideration. It is submitted that only one injury, which too was caused by blunt weapon, had been found on the person of the complainant and on the basis of the same, no case for framing of charge under Section 308 of IPC had been made out.

4. It is further argued by learned counsel for the petitioner that the trial Court also committed a grave error by framing charge under Section 452 of IPC as though a scuffle had taken place between the parties but the same had not taken place on any property belonging to the complainant side. It is submitted that the trial Court erred in not considering this fact. With these broad submissions, it is urged that the impugned order be set aside to the extent to which charges under Sections 452 and 308 of IPC were framed and the petitioner may be discharged of offences punishable under these two sections.

5. *Per contra*, learned State counsel has argued that there is not illegality or infirmity in the impugned order. There was prima facie case on record to prove that the petitioner along with co-accused had formed membership of an unlawful assembly and in prosecution of common object of that assembly, he had criminally trespassed into the house of the complainant and had committed offence of rioting by opening an assault upon them and had caused injuries to the complainant side and had also criminally intimidated them. At that stage, the trial was required to consider the broad probabilities of the case and not to conduct a mini trial and as such, the

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impugned order did not warrant any interference by this Court and deserves to be upheld. It is, thus, urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. Before delving into the correctness of the impugned order whereby the learned trial Court had passed order for framing charges under Sections 308 and 452 of IPC along with other sections, this Court considers it necessary to reiterate the well settled proposition of law pertaining to the framing of charges and the scope of this Court to interfere under Sections 397 and 401 of Cr.P.C.

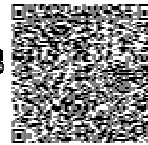
8. In this context, reference can firstly be made to a celebrated pronouncement of Hon'ble Supreme Court cited as '**Union of India Vs. Prafulla Kumar Samel, (1979) 3 SCC 4**' wherein the the following principles had been laid down while dealing with the question of discharge under Section 227 of Cr.P.C. or framing of charge under Section 228 of Cr.P.C. The relevant para is reproduced as under:-

10. "Thus, on a consideration of the authorities mentioned above, the following principles emerge:

1. That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

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3. *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

4. *That in exercising his jurisdiction under Section 227 of the Code the Judge, which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”*

(Emphasis supplied)

9. Reliance can also be placed upon ‘**Sajjan Kumar Vs. CBI, (2010) 9 SCC 368,**’ wherein the Hon’ble Supreme Court had considered the powers of Courts in respect of framing of charge and discharge and the fact that a *prima facie* case would depend upon the facts and circumstances of each case and had laid down the following principles:-

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case

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against the accused has been made out. The test to determine prima facie cases would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

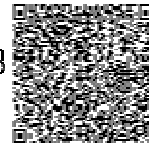
(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the 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.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but 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.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution

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states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”.

(Emphasis supplied)

10. It has been held time and again by the Hon’ble Supreme Court that at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining whether or not a *prima facie* case has been made out against the accused. The trial Court must exercise its judicial mind to the facts of the case before arriving at a conclusion that there is sufficient ground for proceeding against the accused. It has been observed that such exercise must be undertaken so as to ensure that an individual does not have to be put through the rigors of the criminal judicial system for no fault of his. The sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame charge against him. Reference in this regard can also be had to the observations made by Apex Court in ‘*P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398*’ and ‘*Vishnu Kumar Shukla and another Vs. State of Uttarpradesh and another, AIR 2024, Supreme Court 90*’.

11. Recently, in a case cited as ‘*Shashikant Sharma and others Vs. State of Uttar Pradesh and another 2024(1) RCR (Criminal) 67*’, the Hon’ble Supreme Court observed that if from the admitted evidence of the

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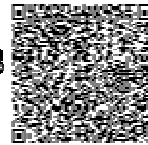


prosecution, as reflected in the documents filed by the investigating officer in the report under Section 173 Cr.P.C., the necessary ingredients of an offence are not made out, then the Court is not obliged to frame charge for such offence against the accused.

12. The ratio of law as laid down in the above cited authorities is that while framing of charge, the very foundation of formation of opinion is that as to whether there is sufficient material on record to '*prima facie*' make out a case of commission of an offence. The word *prima facie* when used in terms of *prima facie* view as far as consideration on the point of framing charge is concerned, would certainly means there being enough material for substance which would give rise to strong suspicion against the accused and holding of a view in favour of the prosecution.

13. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case, it is noticed that as per the allegations, the petitioner had given a blow with a *kirpan* (sword) on the head of the complainant/respondent No. 2. As per medico-legal report (Annexure P-3), a lacerated wound (18x1) cm on left parietal region extending from hairline to occipital area with irregular margins was found and surgical opinion was advised. Undoubtedly, as per the report (Annexure P-9) given by the concerned doctor, since no bony injury was found, hence it was opined to be simple in nature. For the purpose of Section 308 of IPC, it is, however, not essential that injury actually caused to the victim should be sufficient under ordinary circumstance to cause death of the person. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under such circumstances that, if one by that act caused death,

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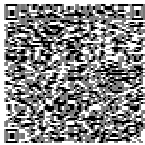


he would be guilty of culpable homicide not amounting to murder. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. For that purpose, the important factors which may be taken into consideration are the nature of weapon used, the intention expressed by the accused at the time of the act, the motive of commission of offence, the nature and size of the injuries, the parts of the body of the victim selected for causing injuries and severity of the blows.

14. In this case, the injury on the person of the victim was undisputedly on the vital part of his body i.e. occipital region of his head. It is alleged to be caused with a sword. The severity of the blow can be discerned from the fact that wound was of the size of 18x1 cm. It was extending from hair line to occipital area with irregular margin. Keeping in view the nature of injury sustained by respondent No. 2, the statements of respondent No. 2 and other witnesses were recorded under Section 161 of Cr.P.C. It cannot be held at the stage of framing of charge that there was no sufficient ground for proceeding against the petitioner/accused under Section 308 of IPC. The intention or knowledge of the fact on the part of the petitioner that injury so inflicted on the vital part of the body of the victim could cause death, cannot be ruled out at this stage.

15. So far as the charge under Section 452 of IPC is concerned, a specific allegation has been levelled in the FIR that the occurrence took place in the plot owned by the complainant party. It is a different matter that there might be some dispute with regard to demarcation of that land but at the time of framing of charge under Section 452 of IPC by the trial Court, a prima facie

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under that section as well was sufficient. As discussed above, the trial Court is competent to frame charge even upon a grave suspicion of commission of offence. The trial Court formed a prima facie opinion that there was sufficient ground to put the petitioner and co-accused to trial for the charges framed under Sections 308 and 452 of IPC, apart from the charges as framed under other sections and it was not for the trial Court to form an opinion that material collected during investigation, if proved, during trial would be sufficient to convict the accused for the said charges or not.

16. Accordingly, on considering the rival submissions of both the parties, material placed on record and on overall assessment of the facts and circumstances of the case, in my considered opinion, no illegality, infirmity or perversity is found in the impugned order, passed by the trial Court. Hence, the same is upheld. Resultantly, the present petition is dismissed being devoid of any merit.

25.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes