



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRR-960-2024
Decided on : 25.07.2024

HISHAM SINGH @ ISHAM AND ANOTHER

. . . Petitioner(s)

Versus

STATE OF HARYANA

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Wazir Singh, Advocate
for the petitioner(s).

KIRTI SINGH, J. (Oral)

The instant revision petition has been preferred by the petitioners to impugn the legality and correctness of an order dated 05.04.2024 passed by the Sessions Judge, Panipat for offences punishable under Sections 452, 308, 323 r/w 34 IPC was ordered to be framed against them.

2. Learned counsel for the petitioners *inter alia* submit that complainant-Naresh Kumar is the real brother of the petitioners and they are having ancestral properties in the village. The land was partitioned/settled in the year 2017 and 2019, but the complainant Naresh Kumar backed out from these compromise. It was also stated that the complainant alongwith his wife namely Anita and his two daughters had given beatings to the petitioner No.2- Suresh Kumar on 21.09.2020 and 11.04.2021, but the matter was compromised by the panchayat. On 26.04.2022, the final Settlement/ partition for the ancestral land, houses and plots had taken place and the matter was amicably settled.



3. Learned counsel for the petitioners further submits that on 08.10.2022, the petitioners along with their family members had gone to attend a function at Village Shera and when they entered their ancestral house, a scuffle took place between both the parties. It has been argued that a false case has been registered against the petitioners who are real brothers only on the basis to grab the joint agricultural land. He also urged that the ingredients of Section 308 IPC has not been attracted. There was no material before the learned trial Court to proceed against the petitioners for commission of offence under Section 308 IPC.

4. Notice of motion.

5. On asking of the Court, Mr. Anmol Malik, DAG, Haryana, who is present in Court submits that there is no illegality in the impugned order and the proceedings have been rightly charged under Section 308 IPC. The petitioners were armed with various weapons including an iron rod and danda blows on the head of the complainant.

6. Heard the rival submissions made by both the parties.

7. The allegations against the accused persons are that on 08.10.2022, they in furtherance of their common intention, had entered the house of the complainant-Naresh Kumar and inflicted iron rod and danda blows on the head of the complainant-injured Naresh Kumar and also cause simple injuries to his wife Anita Devi. A perusal of the medical record also shows that Naresh Kumar had suffered lacerated wound of size 5 x 3 cm over parieto-temporo occipital area with fresh bleeding and lacerated wound of size 2 x 2 cm over parietal area with fresh bleeding. It is also on record that complainant- injured Naresh Kumar, received multiple stitches on the his head. It can be clearly seen that injury had been caused with iron rod and



could have proved fatal.

8. The Hon'ble Supreme Court in the case of “**State of M.P. Vs. Mohanlal Soni (2000) 6 Supreme Court Cases 338**”, held that at the stage of framing of charges, the Court has to be only prima facie satisfied about existence of sufficient ground for proceedings against the accused. The Court can evaluate material and documents on record, but it cannot appreciate the evidence at this stage. Relevant paras are reproduced as below:

“4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed, The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijaya after considering the provisions of Sections 227 and 229 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may peruse the



records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof.”

9. In “State of Gujarat Vs. Dilipsinh Kishorsinh Rao” 2023 Live Law (SC) 874, the Supreme Court has held that the primary consideration at the stage of framing of charge is the test of existence of a prima facie case and at this stage, the accused has no right to produce any material and call upon the Court to examine the same as no provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The relevant paras are reproduced as belows:

xxx xxx xxx

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

xxx xxx xxx

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

xxx xxx xxx



10. Accordingly, In view of the above discussions, this Court is of the view that there is no illegality in the order passed by the learned trial Court and I find no merit in the present petition. Therefore, the same stands **dismissed.**

(KIRTI SINGH)
JUDGE

July, 25 2024
Kavita Nain

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*