

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-21488 of 2011 (O&M)
Date of Decision: January 23, 2015

Hari Parkash Sharma

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

1. To be referred to the Reporters or not? **YES**
2. Whether the judgment should be reported in the Digest? **YES**

Present: Mr.Sunil Chadha, Senior Advocate with
 Ms.Pallavi Singh, Advocate
 for the petitioner.

Mr.A.S.Klar, Asstt. Advocate General, Punjab
 for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 26.05.2011 passed by learned Judicial Magistrate Ist Class, Ludhiana whereby the application filed by the petitioner seeking permission to place on record documents so as to consider the same at the time of deciding the question of framing charge has been dismissed.

Notice of motion was issued in this case and learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that the petitioner-accused filed application before the trial Court at the time of framing of charge to place on record some documents i.e. letter No.DRL-4302 dated 21.05.2008, letter No.409-5A dated 20.05.2008 from DSP City-II, Ludhiana to Dy. Registrar, Cooperative Societies, Ludhiana, letter No.448-50-DSP City-II, Ludhiana dated 03.06.2008 addressed to Dy. Registrar, Cooperative Societies, Ludhiana, letter No.2340-SA(sarl)/West dated 10.06.2008 from Asstt. Registrar, Cooperative Societies, Ludhiana to Dy. Registrar, C.S. Ludhiana etc. It is written in the application that it is a rarest of the rare case where the Court is justified in looking into the above-said material as the material produced by the accused-applicant convincingly establish that the whole prosecution version is totally absurd, preposterous and concocted.

Learned JMIC, Ludhiana vide order dated 26.05.2011, dismissed this application by stating that from these documents, no inference could be drawn in favour of the accused or even otherwise, accused cannot be discharged on the basis of these document. The accused has a right to cross-examine the witnesses and put the documents to the witnesses at the relevant time for confirmation and also has right to lead the evidence in his defence. The Court also held that it is not the rarest of the rare case as mentioned by the applicant to allow him to place on record the documents at the time of

framing the charge. The Court correctly held that the accused has no right to summon the record at the time of framing the charge or place on record any documents.

From the arguments of learned counsel for the petitioner, I find that these documents which the petitioner wants to produce on record for consideration at the time of framing the charge, in no way, can be held as a material of unimpeachable character of sterling quality to show that the whole prosecution case is totally absurd, preposterous and concocted. It is settled law that at the time of framing the charge, the trial Court can look into the material produced by the prosecution but not the material produced by the defence. The Court is to frame the charge after perusing the report under Section 173 Cr.P.C., statements recorded during the investigation under Section 161 Cr.P.C. and documents relied upon by the prosecution. At this stage, defence of the accused cannot be looked into. Otherwise also, it will amount to giving of finding without offering any opportunity to produce the evidence. The accused has every right to cross-examine the witnesses, to confront them with the documents as per law and can produce the defence evidence but at the time of framing the charge, his defence and documents cannot be looked into.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***State of Orissa vs. Debendra Nath Padhi, 2005(1) RCR (Criminal) 297***. I have gone through above-cited judgment. Rather, this cited judgment goes against the petitioner

where it is held that trial Court has no jurisdiction to allow the accused to produce any document at the stage of framing of charge. However, powers of the High Court under Section 482 Cr.P.C. and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Learned counsel for the petitioner further cited judgment passed by the Hon'ble Supreme Court in ***Rukmini Narvekar vs. Vijaya Satardekar and others, 2008(4) RCR (Criminal) 924***, in which it is held that ordinarily defence material cannot be looked into by the Court while framing of the charge. However, in some very rare case the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous and concocted.

I have gone through the above-cited judgment also and same will not apply in the present case, as already held that the documents i.e. letters written by DSP City-II, Ludhiana to Dy. Registrar, Cooperative Societies, Ludhiana, Asstt. Registrar, Cooperative Societies, Ludhiana to Dy. Registrar, C.S. Ludhiana etc. did not show that whole case of the prosecution is absurd, preposterous and concocted one.

In view of the above, I find that the impugned order dated 26.05.2011 passed by learned Judicial Magistrate Ist Class, Ludhiana

is correct and as per law and same is upheld.

Therefore, finding no merit in the present petition, the same is dismissed.

January 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE