IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-25078 of 2011 (O/M)
Date of decision : 11.2.2015

Aman Kumar and Pawan Kumar ..... Petitioners

Versus

State of U.T. Chandigarh ...... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Maninder Singh, Advocate, with,
Mr. Jagmeet Randhawa and Mr. Ramandeep Singh,
Advocates, for the petitioners.

Mr. Sukant Gupta, Additional P.P., for U.T. Chandigarh.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Petitioners Aman Kumar and Pawan Kumar seek quashing of the impugned order dated 14.5.2011 (Annexure-P-6), passed by the learned Additional Sessions Judge, Chandigarh, affirming the order dated 2.5.2009 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Chandigarh, whereby charges under Sections 420 and 120-B IPC were framed against the accused/petitioners herein in the case pertaining to FIR No. 149 dated 24.4.2006, registered at Police Station Sector 17, Chandigarh, under the said sections.

It is pleaded that in the said FIR, petitioner No. 1 has been shown as Manager Incharge of M/s Genesis Infrastructure and Trading House (in short 'the Company'), whereas petitioner No. 2 has been shown as Sales Manager of the said Company. It is asserted that there is no evidence to the effect that petitioners were Manager Incharge and Sales Manager of the said Company. A law point has also been raised that without evidence, no charge could be framed. It has been stated that one Aftab Sandhu, Proprietor of M/s Genesis Infrastructure and Trading House was operating from SCO Nos. 139-141, Cabin Nos. 401-404, Sector-17-C, Chandigarh. He had purchased certain goods worth Rs. 6,53,381/-, vide bill No. 331, dated 7.12.2005. He (Aftab Sandhu) issued certain cheques, which were dishonoured. The complainant had also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'). It is stated that there is no documentary evidence that petitioners No. 1 and 2 had ever worked as Manager Incharge and Sales Manager respectively in the said Company.

I have heard learned counsel for the petitioners, learned Additional Public Prosecutor for the U.T. Chandigarh and have also carefully gone through the file.

Learned counsel for the petitioners has vehemently argued that there is no documentary evidence available on file to show that petitioners No. 1 and 2 were the Manager Incharge and Sales Manager of the said Company. It has been further argued that mere oral assertion in this regard cannot be believed. Therefore, it has been argued that without any evidence, the order dated 2.5.2009 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Chandigarh, framing charges against the accused/petitioners herein is illegal and the order dated 14.5.2011 (Annexure-P-6), passed by the learned Additional Sessions Judge, Chandigarh, is also illegal. The attention of the Court has also been drawn to the chargesheet (Annexure-P-5) wherein charges against the accused/petitioners have been framed under Sections 420 and 120-B IPC. It has been further argued that the petitioners have no concern with said Aftab Sandhu, proprietor of the said Company.

Learned counsel for the petitioners has relied upon the authority of the Hon'ble Supreme Court in *Sajjan Kumar Versus Central Bureau of Investigation,* (2010) 9 Supreme Court Cases, 368, wherein certain principles were framed on the point of exercising jurisdiction under Sections 227 and 228 of the Code of Criminal Procedure, which relate with discharging the accused at the charge stage and framing the charge. The said principles are reproduced as under :-

> "21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-
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> (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 against the accused has been made out. The test to determine prima facie case 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 discloses 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 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."

Further reliance has been placed on earlier authorities of the Hon'ble Supreme Court in *Union of India Versus Prafulla Kumar Samal and another,* (1979) 3 Supreme Court Cases, 4; *State of M.P. Versus Mohanlal Soni,* (2000) 6 Supreme Court Cases 338; *P. Vijayan Versus State of Kerala and another,* (2010) 2 Supreme Court Cases 398; *Pepsi Food Limited and another Versus Special Judicial Magistrate and others,* (1998) 5 Supreme Court Cases 749; *G. Sagar Suri and another Versus State of U.P. and others,* (2000) 2 Supreme Court Cases 636 and *Dilawar Balu Kurane Versus State of Maharashtra,* (2002) 2 Supreme Court Cases 135. However, in *Sajjan Kumar's* case (supra), the matter was thoroughly considered.

Learned counsel for the petitioners has argued that the trial Court has not to act as a post office and that grave suspicion must be there to prove the allegations levelled against the accused for the purpose of framing the charge. It has been further argued that for proving the criminal conspiracy under Section 120-B IPC, some evidence should be produced.

I am of the view that for framing the charge, the trial Court is required to go through the report of police filed under Section 173 Cr.P.C., the statements of the witnesses recorded under Section 161 Cr.P.C. and the documents placed on file. The plea of the learned counsel for the petitioners is that there is no document on file to show that the petitioners were working as Manager Incharge and Sales Manager in the said Company.

I am of the view that whenever there is a fraud, it is not necessary that all the appointments should be done in writing. It is quite possible that one may be pretending to be Manager or Sales Manager as well as other functionaries of the Company, whereas he may not be so. Therefore, in this regard, the oral evidence to be led by the prosecution is also to be examined. There is statement of witnesses, in which allegations have been levelled against the accused/petitioners. Therefore, at this stage, it cannot be said that the charges against the accused/petitioners herein are groundless and there is no grave suspicion against the petitioners.

It being so, I do not find any ground to interfere with the order dated 2.5.2009 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Chandigarh, framing the charge against the accused/petitioners and the order dated 14.5.2011 (Annexure-P-6), passed by the learned Additional Sessions Judge, Chandigarh, dismissing the revision of the accused/petitioners.

Accordingly, the present petition stands dismissed.

(KULDIP SINGH)
JUDGE

11.2.2015
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