

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-28529 of 2015
Date of Decision: 01.9.2015**

Gurdial Singh Sandhu

--Petitioner.

Vs.

Central Bureau of Investigation, Special Crime-I.

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S.Cheema, Sr. Advocate with
Mr. Jasdev Singh Mehndiratta, Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the order dated 7.5.2015 (Annexure P-1) for framing of charge and also the charge sheet of even date, i.e. 7.5.2015 (Annexure P-2) in a case filed by the Central Bureau of Investigation ('CBI' for short), Punjab, whereby charges were framed against the petitioner under Section 109 of the Indian Penal Code ('IPC' for short) read with Section 13 (1) (e) and Section 13 (2) of the Prevention of Corruption Act ('PC Act' for short) in FIR No. RC 3 (A) 2005-SCU-I-CBI and the consequential proceedings arising therefrom.

Learned senior counsel for the petitioner submits that

petitioner had no role to play in the commission of offence alleged against him. Petitioner was a big landlord and was having regular source of handsome income. He refers to numerous orders available on record to contend that learned trial court, while framing the charge, has failed to appreciate the factual as well as legal aspect of the matter, because of which the impugned order framing the charge has resulted into serious miscarriage of justice and the same is liable to be set aside. He further submits that the entire case of the prosecution was based on a concocted and made up story. No prima facie case was made out against the petitioner, so as to enable the learned trial court to frame charge against him. He would next contend that learned trial court miserably failed to appreciate the material brought to its notice which speaks volumes in favour of the petitioner. He concluded by submitting that, had learned trial court applied its judicious mind and appreciated the material available on record in the correct perspective, there would have been no scope of passing the impugned order of framing charge against the petitioner. In support of his contentions, learned senior counsel for the petitioner places reliance on the following judgments of the Hon'ble Supreme Court:-

1. Century Spinning & Manufacturing Co. Ltd and others Vs. State of Maharashtra, (1972) 3 SCC 282
2. Krishnanand Agnihotri Vs. State of Madhya Pradesh (1977) 1 SCC 816
3. Union of India Vs. Prafulla Kumar Samal and another, (1979) 3 SCC 4.
4. P. Satyanarayan Murty Vs. State of Andhra Pradesh, (1992) 4 SCC 39

5. M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad, (1992) 4 SCC 45
6. P. Nallammal and another Vs. State (represented by Inspector of Police) (1999) 6 SCC 559
7. Valliammal (D) by LRs V. Subramaniam and others (2004) 7 SCC 233
8. Akhilesh Yadav Vs. Vishwanath Chaturvedi and others, (2013) 2 SCC 1

He prays for quashing the impugned FIR and consequential proceedings arising therefrom, by allowing the present petition.

Having heard the learned senior counsel for the petitioner at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of the impugned order Annexure P-1, charge sheet Annexure P-2, FIR Annexure P-3 and a self contained police report under Section 173 Cr.P.C. (Annexure P-6), would leave no room for doubt that a definite and clear-cut prima facie case was made out against the petitioner, so as to enable the learned trial court to frame charge against him. For the purpose of framing of charge, only a prima facie case was the requirement of law.

Further, a bare perusal of the impugned order Annexure P-1

would show that learned trial court recorded its satisfaction, on the requirement of law of a prima facie case, before passing the impugned order and the same has not resulted in any kind of miscarriage of justice, as alleged by learned senior counsel for the petitioner. Thus, the impugned order deserves to be upheld.

Statements of accounts dated 1.4.1999 of the petitioner and his wife-Smt. Tej Kaur, available at page 91 of the paper book which is part of the police report under Section 173 Cr.P.C. (Annexure P-6), would show a list of 25 movable and immovable properties. Further, statements of accounts of the petitioner and his wife, at the end of check period available at page 98 of the paper book which is also part of the police report, would show a list of as many as 47 movable and immovable properties.

Similarly, statements of income of the petitioner and his wife between 1.4.1999 to 14.4.2005, available at page 104 of the paper book, contains list of as many as 38 movable and immovable properties. Statements of expenditure of the petitioner and his wife w.e.f. 1.4.1999 to 14.4.2005 is also available at page 111 and 112 of the paper book, which would show more than a prima facie case against the petitioner. The abovesaid three lists of movable and immovable properties of the petitioner and his wife would show that petitioner has rightly been charge sheeted and the learned trial court committed no error of law, while passing the impugned order which deserves to be upheld, for this reason also.

Another equally important issue that falls for consideration of this Court is, as to whether the petitioner is entitled to invoke the

inherent jurisdiction under Section 482 Cr.P.C., for the purpose of quashing of a legitimate prosecution. The answer to this question is and has to be an emphatic no. It is held that the petitioner, in the given fact situation of the present case, has not been found entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C., for the purpose of quashing of the impugned order, for framing charge against him.

No doubt, powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the said powers are to be exercised sparingly and with circumspection. Since the impugned order as well as charge sheet have been found to be part of a legitimate prosecution launched against the petitioner, at the hands of the prosecuting agency, present one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., thus, the impugned order deserves to be upheld, for this reason also.

Coming to the judgments relied upon by the learned senior counsel for the petitioner, there is no dispute about the law laid down therein. However, a close perusal of the cited judgments would show that none of them is of any help to the petitioner, being distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme

Court in **Padmausundra Rao and another Vs. State of Tamil Nadu**

and others, 2002 (3) SCC 533.

Further, all the issues raised by the learned senior counsel for the petitioner would be the subject matter of consideration before the learned trial court, during the course of trial, including the probative value of the evidence collected by the investigating agency against the petitioner. It is also pertinent to note here that the impugned order is neither a non speaking nor a cryptic one. A detailed order is not the requirement of law at the time of framing of charge, because requirement of law is only the availability of a prima facie case against the accused.

In the present case, learned trial court not only found a prima facie case against the petitioner, but discussed each and every relevant aspect of the matter, including the documentary evidence collected by the investigating agency against the petitioner. However, evidentiary value as well as sufficiency of evidence for recording the conviction or granting acquittal to the accused would be examined, considered and appreciated by the learned trial court, during the course of trial. It is so said, because the court is not required to conduct a mini trial at the time of framing charge. Under these circumstances, it can be safely concluded that learned trial court proceeded on a factually correct and legally justified approach, while passing the impugned order and the same deserves to be upheld.

The Hon'ble Supreme Court, in its celebrated judgment in **State of Haryana versus Bhajan Lal and others, AIR 1992 SC 604**, laid down the broad principles, as guiding factors for invoking the

inherent jurisdiction of this Court under Section 482 Cr.P.C. The relevant guidelines laid down by the Hon'ble Supreme Court, which can be gainfully followed in the present case, read as under:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned

Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

Reverting back to the facts and circumstances of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the case of Bhajan Lal (supra), which has been consistently followed in the later judgments as well, it is unhesitatingly held that present case does not fall within the ambit of any of the abovesaid guidelines, so as to enable this Court to exercise its inherent jurisdiction under Section 482 Cr.P.C. It is also not permissible in law for this Court to convert itself into the trial court with a view to evaluate the probative value or degree of evidence, because that is the exclusive domain of the learned trial court. In the present case, the learned trial court has not been found to have exceeded its jurisdiction, while passing the impugned order, therefore, it deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived.

bereft of merit and without any substance. Thus, it must fail. No case for bail pending trial has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

01.9.2015
AK Sharma