

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

Crl. Revn. No. 2798 of 2014

DATE OF DECISION: 05.02.2015

Satender Dhama

.....Petitioner

Versus

State of Punjab

.....Respondent

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Ms. Tanu Bedi, Advocate  
for the petitioner.

Ms. Ritu Punj, Addl. A.G., Punjab.

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**DAYA CHAUDHARY, J.**

FIR No. 292 dated 26.10.2013 was registered under Sections 307,353,186,419,420,468,471,489,120-B,34 IPC, Section 25 of the Arms Act as well as Section 21/22/61/85 of NDPS Act at Police Station Civil Lines, Patiala against two persons, namely, Palwinder @ Pinda and Satnam Kaur.

As per allegations in the FIR, a recovery of 58 gms of heroin and 1000 gms of dextro-propoxyphene was made from Palwinder Singh and Satnam Kaur while they were travelling in a car bearing No. PB65-P-9132. It was also alleged in the FIR that accused-Palwinder Singh had even attempted to shoot at the investigating team.

The investigation in the present case was completed and a

final report under Section 173 Cr.P.C. was submitted on 15.4.2014, wherein, it was mentioned that co-accused-Palwinder Singh made a disclosure statement that Satwinder Singh Dhama was also involved in the transaction of sale of drugs. At the time of framing of charge, the petitioner moved an application for discharge stating therein that no case was made out against him as neither there was any connecting evidence for his involvement in the case nor his name was mentioned in the FIR and recovery was also not effected from him. Said application for discharge was dismissed and charges were framed vide order dated 6.8.2014.

The present revision petition has been filed to challenge order of dismissal of application of discharge as well as order of framing of charge dated 6.8.2014 and other proceedings arising therefrom.

Learned counsel for the petitioner contends that there is no connecting evidence which shows the involvement of the petitioner as neither his name was mentioned in the FIR nor any recovery was effected from him. Moreover, sufficient evidence was not adduced to prove the involvement of the petitioner during investigation. Only on the basis of disclosure statement of co-accused, namely, Palwinder Singh, the petitioner has been implicated, whereas, his name is Satender Dhama and not Satwinder Singh Dhama. Learned counsel also submits that the petitioner was confined in jail in connection with another FIR No. 56 dated 15.5.2013 registered under Sections 379, 411 IPC and Section 21/22 of NDPS Act and his production warrants were obtained in the present case and he was arrested on 22.11.2013. It is also the contention of learned counsel that disclosure statement is inadmissible under Section 25 of the Evidence Act and no charge should have been framed against the petitioner under Section 29 of NDPS Act. Learned counsel has also relied upon the judgment of Rajasthan High Court in the case of **Krishan Singh**

**Vs. State of Rajasthan**, 1996 (1) CLJ (Criminal) 69, in support of her contentions.

Learned counsel for the respondent-State submits that only a prima facie case is to be seen at the time of framing of the charge and the allegations against the petitioner are matter of evidence, which are to be examined during the trial.

Heard the arguments advanced by learned counsel for the petitioner as well as State and have also perused the impugned order of framing of charge, order passed in the application for discharge as well as other documents available on the file.

The argument of the learned counsel for petitioner is that the petitioner has been implicated only on the basis of disclosure statement made by co-accused, namely, Palwinder Singh even though there was no connecting evidence indicating his involvement as no material whatsoever has come out during investigation. It has also been argued that the alleged disclosure statement made by co-accused is inadmissible under law.

Admittedly, the petitioner has been charge-sheeted on the basis of statement made by co-accused, who has stated that the petitioner was also involved in the offence but nothing substantial has come on record to prove the same. Even in the final report filed under Section 173 Cr.P.C., nothing concrete has come out to show the involvement of the present petitioner. Only one line has been mentioned in the order that he was also involved in the offence. A perusal of disclosure statement of co-accused-Palwinder Singh shows that the name of the petitioner does not figure in it rather his name has been mentioned in the challan only. In the impugned order of dismissal of application of discharge, it has been mentioned that Satwinder Singh Dhama is also involved in the trade of selling narcotics, whereas, name of the petitioner is Satender Dhama.

Neither any discussion is there with regard to involvement of the petitioner in the order nor any evidence has been collected by the investigating agency to prove the same. It has also been submitted by learned counsel for the petitioner that on the date of delivery of contraband to co-accused, the petitioner was confined in jail.

It has been held in various judgments of Hon'ble the Apex Court as well of this Court that in absence of any evidence except confession of co-accused, no interference or involvement of nominated accused can be drawn. It has also been held that the trial Court is not to act merely as a post office of the investigating agency but the Court is to apply its independent mind at the time of framing of charge. In **Hari Charan Kurmi Vs. State of Bihar (AIR 1964 SC 1184)**, Hon'ble the Apex Court has held as under:-

“Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the concession of guilt which the judicial mind is about to reach on the said other evidence.

.....that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance

in support of its conclusion deducible from the said evidence.

It is now no more *res integra* that the confession by an accused is not a substantive piece of evidence against the co-accused person in the same trial. For this, I place reliance on the law laid down by Hon'ble the Apex Court in the case of **Kashmira Singh Vs. State of M.P. (AIR 1952 AC 159)**. The confession of an accused can only be used against the co-accused for leading assurance to any substantive evidence, if there be any, to be utilized or acted upon.

It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material 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 a *prima facie* case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible.

Now the next question is whether a *prima facie* case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [**See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)**].

In the **State of Bihar v. Ramesh Singh, 1978 (1) SCR 257** Hon'ble the Apex Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. 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 the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In **Union of India v. Prafulla Kumar Samal & Anr., 1979 (2) SCR 229**, Hon'ble the Apex Court after considering the scope of section 227 observed that the words 'no sufficient ground for proceeding against the

accused' clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under:

"(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.

(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 adduced 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 of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a Post office or a

mouth-piece 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."

Again in **Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors., 1979 (4) SCC 274** Hon'ble the Apex Court observed in paragraph 18 of the Judgment as under:

"The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion rounded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence".

In **Gopal Govind Chogale Vs. The Assistant Collector of Central Excise, Maharashtra (1985 Cri LR (Mah) 495) (Bom)**, it has been held that confessional statement of co-accused cannot be the foundation against other accused even for the purpose of framing of charge.

Similarly, Hon'ble the Apex Court in the case titled as **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, 2008 AIR (SC) 2991** in paras 14 and 15 has held that "sufficient grounds to proceed after the charge sheet is submitted is to be considered by the Judge, postulates the

application of judicious mind and whether a case for trial has been made out by the prosecution. The judge has the power to shift the weight of the material for limited purpose of finding out whether or not a prima facie case against the accused has been made out”.

Similarly Hon'ble the Apex Court in the case of **Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijja and others 1990 AIR (SC) page 1962** in para 6 has held that “if two views are equally possible and the judge is satisfied that evidence adduced before him while giving rise to some suspicion but not gave suspicion against the accused, he will be fully within his rights to discharge the accused.”

In view of the facts and law position explained above, the present petition is allowed and impugned order 6.8.2014, vide which, the application filed by the petitioner for discharge has been dismissed and charges have been framed against him is quashed. Petitioner, namely, Satender Dhama is acquitted of the charges framed against him.

February 05, 2015  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**