

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

CRR No.831 of 2015 (O&M)
Date of decision: 27.04.2015

Jal Singh & others

-----Petitioner (s)

V/s

State of Haryana

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers 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:- Mr. Gorakh Nath, Advocate
for the petitioner(s).

HARI PAL VERMA, J.

Through the instant revision petition filed under Section 401 CrPC, the petitioner has challenged the order dated 9.1.2015 passed by Additional Sessions Judge, Karnal, wherein charges have been ordered to be framed against the accused-petitioners under Sections 120-B, 148, 379, 447, 511, 436, 427 read with Section 149 as well as Section 506 IPC.

Pursuant to order dated 9.1.2015, charges have been framed against the petitioners on 13.1.2015.

The trial Court has found that during the pendency of the trial, supplementary challan under Section 173(8) CrPC was submitted wherein Section 436 IPC was deleted on the basis of

report dated 22.4.2014 submitted by Shri Joginder Singh Rathee, DSP, Karnal after conducting the further investigation. On the question as to whether the investigating officer has right for further investigation under Section 173(8) CrPC or for fresh investigation or re-investigation, when the investigation was already complete in the case and challan was submitted in Court, learned Public Prosecutor had relied upon a judgment in the case of **Smt. Pusparani Samal v. Suretha Kumar Diswal 1998(3) Criminal Court Judgments (Orissa) 514** to state that no prior permission of the Court was obtained to seek re-investigation. Accordingly, on the point of Section 436 IPC, the trial Court observed as under:-

“7. After hearing the submissions made in this case and after going through the records of the case as well as the case laws referred above, this Court is of the view that a prima-facie case under Section 436 of the Indian Penal Code is made out against all the accused. Section 436 IPC is reproduced hereunder:

“436. Mischief by fire or explosive substance with intent to destroy house, etc. – Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

There are specific allegations against the accused that they in view of the conspiracy dismantled the tubewell kothas of the complainant part and also put the

*articles viz. cot luggage etc. lying in the kotha, on fire. It is a matter of evidence whether the accused committed offence under Section 436 IPC or not but at this stage a prima-facie case is made out against all the accused. In this case, the Investigating Officer usurped the power of the Court and practically decided the case holding that offence under Section 436 IPC is not made out during alleged further investigation although it was not further investigation but re-investigation by the Investigating Officer without prior permission of the Court. The Investigating Officer under the garb of Section 173(8) Cr.P.C. has misutilized the provisions of Section 173(8) Cr.P.C. and deleted Section 436 IPC without having any fresh evidence available on the record. Similar question was dealt with by the Hon'ble Orissa High Court in **Smt. Pushpa Rani's case (supra)** where the Investigating Officer without following the procedure deleted Section 307 IPC. When there were two stories before the Investigating Officer and he submitted challan earlier under Section 436 IPC and later on during re-investigation altered Section 436 IPC into Sections 427 and 511 IPC, in that situation, it would have been legal and proper for him to leave the whole matter to be considered by the Court during the trial."*

The trial Court while relying upon the case of **Rajinder Singh v. State of Haryana** 1992 CrLJ, P&H 232 has observed that a *prima facie* case regarding commission of offences is required to be considered at the time of framing of charges and

the question whether charge will eventually stand proved or not can be determined only after the evidence is recorded in the case.

In the case in hand, the material on record leads to form a presumptive opinion as to the existence of the factual ingredients constituting the offences under Sections 120-B, 148, 379, 447, 511, 436, 427 read with Section 149 as well as under Section 506 IPC and it is only on the aforesaid basis the trial Court has framed the charges. Petitioner has not challenged the charges as framed on 13.1.2015.

In these circumstances, I find no reason whatsoever to interfere with the impugned order dated 9.1.2015 passed by Additional Sessions Judge, Karnal.

Dismissed.

April 27, 2015
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(HARI PAL VERMA)
JUDGE