

CRM No. M-35154 of 2016

DECIDED ON: OCTOBER 25, 2016

GURDIAL SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of the instant petition preferred under Section 482 of Code of Criminal Procedure (for brevity 'Code'), petitioner has sought the quashing of order dated July 22, 2015 (Annexure P-3) passed by learned Additional Chief Judicial Magistrate, Barnala vide which, an application moved under Section 216 of the Code, has been allowed and petitioner has been ordered to be charge sheeted under Section 452 IPC in addition to Sections 341, 325, 323, 506 and 34 IPC.

The contention of learned counsel for the petitioner is that after the registration of case, investigation was conducted by SHO, Police Station Rureke Kalan. Since, an offence under Section 452 IPC was not *prima facie* established, he deleted the said offence as well as Sections 27 and 30 of the Arms Act, 1959. On completion of investigation, charge was only presented under Section 342, 325, 323, 506 and 34 IPC. Thereafter, the prosecution moved an application under Section 216 of the Code for the amendment of charge sheet and inclusion of Section 452 IPC but learned trial Court without

affording an opportunity of being heard, petitioner as well as his co-accused, allowed the application and made an addition of the offence under Section 452 IPC. Accordingly, amended charge sheet was prepared vide impugned order dated July 22, 2015.

Since a deep inquiry was conducted by SHO, after the registration of FIR an offence under Section 452 IPC was deleted. The said report has been outrightly discarded by learned trial Court. The impugned order is based upon presumption and assumptions. As there is not even a *prima facie* evidence that the injuries were allegedly caused to the complainant by criminally trespassing into his house, the framing of charge under Section 452 IPC is unwarranted. Thus, the impugned order is liable to be set aside.

This Court has given an anxious thought to the various submissions made by learned counsel for the petitioner and has perused the record available.

Undoubtedly, FIR was registered under Sections 341, 325, 323, 506 and 34 IPC. However, after investigation, report under Section 173(2) of the Code was presented only under Sections 341, 325, 323, 506 and 34 IPC. By now it is well pretty settled that while considering the question of framing the charges under Section 227 of the Code, the Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused and further that where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court is fully justified in framing the charges and proceedings with the trial.

Equally, is the settled proposition of law that at the stage of framing the charges their cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he is/was conducting a trial.

Adverting to the facts of the case in hand, FIR was initially registered under Section 452, 341, 325, 323, 506 and 34 IPC and Sections 27 and 30 of Arms Act, 1959. However, offences under Sections 452 and Sections 27 and 30 of Arms Act have been deleted during enquiry but the Court has ample powers to consider the entire allegations contained in the FIR as well as the statements of the witnesses and then to form its opinion, as to whether an offence is made out or not. In the case in hand, there are clear cut allegations that the injuries were caused to the complainant by the petitioner/accused, while criminally trespassing into his house. Thus, there being a *prima facie* evidence in this regard, the trial Court has been fully justified in making an altercation in the charge by allowing the application under Section 216 of the Code.

Thus, this Court is of the considered view that there is no infirmity or illegality in the impugned order. Accordingly, instant petition is being devoid of merit, is dismissed.

OCTOBER 25, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No