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

CRM-M-44339 of 2017

Date of decision: December 21, 2017

Jaibir Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. K.S. Khehar, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

A.B. CHAUDHARI, J (Oral)

In the present petition, the petitioner has put to challenge the order/charge sheet dated 19.09.2017 (Annexure P-9) and order dated 02.11.2017 (Annexure P-12) passed by learned Additional Sessions Judge, Sonipat.

Rule. Heard forthwith with the consent of learned counsel for the rival parties.

The petitioner is facing a prosecution arising out of FIR No.615 dated 02.12.2015, under Sections 120-B, 419, 420, 467, 468, 471 of Indian Penal Code, 1860 and Sections 7 and 13 of the Prevention of Corruption Act, 1988, registered at Police Station Gannaur, District Sonipat. The petitioner had earlier approached this Court by way of Criminal Revision No.3745 of 2017 and the same was decided on 11.10.2017 with the following order:-

“Learned counsel for the petitioner seeks permission to withdraw the instant petition, with liberty to raise all the

pleas before the trial Court.

Dismissed as withdrawn, with liberty as aforesaid.”

When the said order was passed, upon hearing the learned counsel for the petitioner, this Court was satisfied that in so far as present petitioner-Jaibir Singh is concerned, impugned order dated 19.09.2017 did not refer to any specific material against the petitioner who wanted to contest the framing of charge against him, which specific material would indicate his complicity in the alleged crime. The submission is that the petitioner while holding additional charge of Naib Tehsildar had merely registered sale-deed and had done nothing beyond that nor there was any evidence except a bald statement about the petitioner committing any offence of allegedly taking bribe. This Court found substance in the submission to the above effect. But then on a second thought, this Court was of the opinion that the matter regarding framing of charge against the present petitioner was required to be re-heard and that is why liberty was granted to the present petitioner to approach the trial Court again and file proper application raising all the pleas before it. It is true that the aforesaid order dated 11.10.2017 of this Court did not say so explicitly, but then it was not necessary, particularly when this Court desired that the trial Court should re-hear the petitioner. It is in that backdrop, liberty to approach the trial Court again was granted.

In accordance with the liberty granted by this Court as aforesaid, the petitioner had applied for re-hearing on framing of charge and for discharge under Section 227 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') read with Section 228 of Cr. P.C. The said application was argued before the trial Court and the trial Court

dismissed the same. Perusal of the second impugned order dated 02.11.2017 of the trial Court after the said order was made by this Court and in particularly Paragraph 6, shows the only reason for rejection. Paragraph 6 of trial Court's order dated 02.11.2017 is reproduced below:-

“6. A perusal of the order dated 11.10.2017, passed by the Hon'ble High Court goes to show that the Hon'ble High Court has not set aside the order dated 19.09.2017 passed by this Court, vide which, the applicant/accused alongwith his co-accused was charged. It is evident that the applicant/accused Jaibir Malik by way of present application, wants to get the order dated 19.09.2017 reviewed, which is not permissible under the law. Hence, the request made by applicant/accused-Jaibir Malik by way of instant application, is hereby declined and application is dismissed. Papers be attached with the main file.”

It is clear from the reading of the above Para 6 that the trial Court has treated that the said order dated 19.09.2017 as the order against which review was not permissible under law.

Section 362 of Cr. P.C. reads thus:-

“362. Court not to alter judgement. -- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

It is clear from the reading of above Section 362 Cr. P.C. that what is prohibited by law explicitly is the alteration or review of any judgment or a final order disposing of the case. In the present case, admittedly, there is no judgment rendered by the trial Court. In so far as the second part of said Section is concerned, the requirement is a final

order disposing of a case. Making of an order framing charge by no stretch of imagination can be said to be a final order disposing of a case. I think it would be a misnomer to call the order framing charge as “final order” disposing of a case. In my opinion, an order framing a charge would neither amount to final order nor such order will dispose of a case.

The order made by this Court on 11.10.2017 was thus, in the nature of directions issued under Section 482 Cr. P.C. to re-hear the matter on question of hearing of charge qua the present petitioner only. The trial Court ought to have followed the said direction or at the most could have applied for clarification, if there was any doubt or conundrum. Be that as it may. Now by way of abundant precaution, this Court will have to set aside both the impugned orders. In the result, I make the following order:-

ORDER

- (i) CRM-M-44339 of 2017 is allowed;
- (ii) Impugned order/charge sheet dated 19.09.2017 (Annexure P-9) and order dated 02.11.2017 (Annexure P-12) qua the petitioner only are set aside;
- (iii) The trial Court shall re-hear the application of the petitioner for discharge that was made after passing of order dated 11.10.2017 by this Court in CRR No.3745 of 2017.

(A.B. CHAUDHARI)
JUDGE

December 21, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**