

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

**CRR-1980-2016 (O&M)
Date of decision: 8.09.2017**

Tarandeep Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Abhishek Bajaj, Advocate,
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Pankaj Bhardwaj, Advocate,
for respondent No.3.

JAISHREE THAKUR, J.

1. The petitioners herein are aggrieved against the order dated 29.03.2016 passed by the Additional Sessions Judge, Ferozepur dismissing the application filed under section 294 Cr.P.C. by the petitioners.

2. In brief, the facts as alleged are that a marriage was solemnized between Tarandeep Singh petitioner No. 1 and Amandeep Kaur respondent No. 2 on 25.11.2013. The marriage did not last long; resultantly respondent No. 2 got a detailed FIR No. 35 under sections 307/406/498-A/ 342/ 506/ 120-B IPC registered at Police Station Ferozepur on 28.01.2014. It was alleged that an attempt had been made upon her life by the family members of her husband on account of bringing inadequate dowry. It was further submitted that on 12.01.2014 when she was present in her bedroom at

House No. 268 Sector 10-A Chandigarh, her husband, father-in-law and

mother-in-law raised a demand for Rs. 2 crores in cash and a 4 Kanal plot at IPS colony, Nayagaon and on her refusal to fulfill these demands an attempt was made on her life. After the registration of the FIR, there was bitter litigation between the parties which ultimately resulted in the constitution of a Special Investigation Team (for short “SIT”) to look into the matter. This SIT was constituted under the orders of this High Court in LPA No. 630 of 2014. After the presentation of the challan under the aforesaid sections, an application under section 294 Cr.P.C. was preferred by the petitioners herein before the Additional Sessions Judge stating that contents of the 3 Compact Discs, walk-in-sheet and bills issued by a restaurant Barbecue Nation in Sector 26 Chandigarh dated 13.01.2014, be put for admission or denial to the complainant. It was argued by learned counsel for the petitioners - accused that the contents of the CD, bills were material to be looked into before framing of the charges under section 307 IPC. Though no reply was filed to the said application, it was contested by counsel for the complainant and the Additional Public Prosecutor for the State that the application was not maintainable at this stage since charges had not been framed. The Learned Additional Sessions Judge by the impugned order dated 29.03.2016 dismissed the application holding that the accused could not lead defence evidence before framing of the charges. Aggrieved against the said order the instant revision petition has been preferred.

3. Mr. Kanwaljit Singh, learned Senior counsel assisted by Mr. Abhishek Bajaj, Advocate argues that Additional Sessions Judge has failed to appreciate that Section 294 Cr.P.C. has been enacted to speed up trial by admission and denial of documents. Reliance has been placed upon a

judgement rendered by the Hon'ble Supreme Court in ***Shamsher Singh Verma vs. state of Haryana 2015 SCC online page 1242*** to substantiate the argument. It has been submitted by learned counsel for the petitioners that all allegations in the FIR are false and fabricated, since, on 13.01.2014, one day after the alleged occurrence the husband of the complainant and his family members were trying to throttle respondent No. 2, there was the festival of Lohri on which date the parents of the respondent No. 2 were present and the festival was celebrated. This has been captured on the CD which would prove that allegations are false. It is argued that on this very same day i.e. on 13.01.2014 a meal was taken at Barbecue Nation a restaurant in Sector 26 Chandigarh which would establish that respondent No. 2, complainant, was happy in her matrimonial home. It is argued that the object of Section 294 Cr.P.C. is to accelerate the pace of trial and the admission and denial of documents at the very first instance will save time spent in trial. It is argued that in case the petitioner was permitted to put the contents of the CD/walk-in register maintained by Barbecue Nation the restaurant and the bill of Barbecue Nation to the respondent complainant and in case she admitted to the correctness of the same it would show that any offence under section 307 and other sections is not made out.

4. Per contra, Mr Pankaj Bhardwaj learned counsel appearing on behalf of the complainant-respondent No.3 submits that in Cr.P.C. there is no provision which grants a right to the accused to file any material or document in his defence at the time of framing of charges. In this regard learned Counsel for the complainant-respondent No.3 places reliance on judgments rendered in ***State Of Orissa Versus Debendra Nath Padhi***

(2005) 1 SCC 568, subsequently followed in *B.S.E.S Rajdhani Power Limited vs. Vijay Kumar Gupta 2009 SCC online Delhi 693*.

5. I have heard the counsel for the parties and with their assistance have gone through the case law.

6. The moot question posed before this court would be whether an application under Section 294 Cr.P.C is maintainable before charges have been framed at the instance of the accused/defendant?

7. Section 294 Cr.P.C. reads as:-

294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved.

8. A reading of the Section does not show as to at what stage such an application can be preferred. As per the procedure laid down in the Code of Criminal Procedure pertaining to trials, the court is required to evaluate material and documents available on the record to find out if a prime facie case is made out. If there is a possibility that the accused might have committed the offence, it can frame charges. At the stage of framing of

charges, the court is not required to delve deep into the truthfulness of allegations made which can only be tested after evidence is led and trial concluded.

9. The issue regarding the approach to be followed by courts in framing of charges, discharge of accused under Sections 227, 228, 239, 240, that is trial before a Court of Sessions and trial of a Warrant case by magistrate, pertaining to framing of charge and discharge of an accused came up before the Hon'ble Apex Court in ***Sheoraj Singh Ahlawat and Others Versus State Of Uttar Pradesh and Another (2013) 11 Supreme Court Cases 476*** wherein after considering various case law in this regard it was held that the accused is entitled to urge his contentions only on materials submitted by the prosecution. It was further held that at the stage of framing of charges the accused is not entitled to produce any material nor is the Court required to consider any such material if submitted. The Hon'ble Apex Court also referred to the judgment rendered in ***State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568*** in which the question was decided whether the trial Court can at the time of framing of charges consider material filed by the accused. The answer was in the negative and the ratio of the judgment rendered in ***State of Orissa*** (supra) was culled out in para 18 of the judgment rendered in ***Sheoraj Singh Ahlawat and Others*** case (supra) which reads as under :-

“18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. ... Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that

at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material."

10. The judgment rendered in ***State of Orissa*** (supra) was further relied upon by the Delhi High Court in ***B.S.E.S. Rajdhani Power Ltd. vs. Vijay Kumar Gupta, 2009 SCC OnLine Del 693***, where a similar issue arose. Criminal complaints were filed by B.S.E.S. Rajdhani Power Ltd.

alleging that inspections carried out in various premises revealed the commission of direct theft of electricity. The Special Court constituted under the Electricity Act dismissed the complaint after allowing an application filed under Section 294 Cr.P.C. showing that the respondents had been regularly paying electricity bills raised from time to time. The order dismissing the complaint and the summoning order was challenged and the Apex Court returned the categorical finding while relying upon ***Debendra Nath Padhi*** case (supra) that the trial Court can only consider the material produced by the prosecution at the time of framing of charges and there is no provision in the Code of Criminal Procedure which grants the accused any right to file any material or documents at the said stage.

11. In the present case, the petitioners herein seek to rely upon 3 CDs and certain documents to establish the fact that all was well between the parties on 13.01.2014 a day after the alleged occurrence on 12.01.2014 when petitioner Tarandeep Singh and his parents tried to strangle her with a dupatta. As has been held in the aforesaid judgments, the accused facing trial has no right to adduce any evidence at the stage of framing of charges and it is obligated upon the trial Court to frame charges on the basis of evidence as produced after investigation by the prosecution.

12. Learned Senior counsel for the petitioners has laid great emphasis upon a judgment rendered in ***Shamsher Singh Verma vs. State of Haryana, 2015 SCC OnLine SC 1242*** while arguing that the scope of Section 294 Cr.P.C. is to expedite trial and save time of the Court in admission and denial of documents. The judgment as relied upon is distinguishable on facts and not relevant. In the case of ***Shamsher Singh***

Verma (supra) FIR No. 232 in respect of offence punishable under Section 354 IPC and one under Protection of Children from Sexual Offences Act, 2015 came to be registered. After investigation, a charge-sheet was filed against the appellant, on the basis of which Sessions case No. 33 of 2014 was registered and after hearing the parties, charges were framed on 28.03.2014 in respect of the offences. Prosecution witnesses were examined in the said case and thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. The defence also examined four witnesses and thereafter an application was filed under Section 294 Cr.P.C. before the trial Court with a prayer to send a recording of a conversation to get the voice of the appellant matched with the recorded voice in a CD to FSL for establishing its authenticity. This application was rejected by order dated 21.02.2015 and the same was affirmed by the High Court. It was against the rejection of the order sending the conversation recorded to FSL that a criminal appeal was preferred to the Apex Court. In para 9 of the said judgment the Hon'ble Supreme Court was concerned with the question as to whether the accused had been denied right of defence or not and it was in these circumstances while referring to Section 294 Cr.P.C. it came to hold that *“object of Section 294 Cr.P.C. is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence.”* The Apex Court went further in defining the word “document”. The matter was disposed of by holding that the Courts below have erred in law in not allowing the application of the defence to get played the compact disc relating to

conversation between father of the victim and son and wife of the appellant regarding alleged property dispute. The judgment as relied upon is not applicable in the instant case as the issue raised therein pertained to an application filed by the accused *after* the charges had been framed and he had been given an opportunity to lead his evidence in defence, whereas in the instant case, the said application has been moved even before the charges have been framed, which is not sustainable.

13. Therefore, in view of the law laid down, the application for leading evidence by invoking Section 294 Cr.P.C. is not maintainable before the framing of charges, hence there is no infirmity in the order passed by the trial Court.

14. Dismissed.

8.09.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.