

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

**CRL. REVISION No.3159 OF 2017 (O&M)
DATE OF DECISION : 6th SEPTEMBER, 2017**

Suresh Chand

.... Petitioner

Versus

State of Haryana & another

.... Respondents

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

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Present : Mr. P. S. Hudal, Senior Advocate with
 Mr. Dinesh Trehan, Advocate for the petitioner.

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A. B. CHAUDHARI, J. (ORAL)

The petitioner-accused against whom cognizance has been taken by the Sessions Judge under the Prevention of Corruption Act has put to challenge the order dated 16.08.2017 taking cognizance by not accepting the cancellation report.

In my opinion, the petitioner, who is proposed to be an accused in a case of non-acceptance of cancellation report, does not have any *locus standi* to oppose taking cognizance by the trial Court in the light of Section 19 of the Prevention of Corruption Act and therefore, the petition qua order dated 16.08.2017 taking cognizance, would not be maintainable.

In that view of the matter, the learned senior counsel for the petitioner prays for withdrawal of the petition only qua order taking cognizance by the trial Court for offence under Section 7 and 13 of Prevention of Corruption Act.

Accordingly, the petition stands dismissed as withdrawn qua order taking cognizance by the trial Court vide order dated 16.08.2017.

In the present petition then there is challenge to the second order framing of charge against the petitioner which is at page 42 of the petition.

Learned senior counsel for the petitioner fairly states that indeed the petitioner did not apply for discharge from the case contemplated by Section 227 Cr.P.C. Nevertheless, in the reply to the protest petition that was filed on 31.07.2017 there are specific averments that the prosecution against him is without any merit and that there is any evidence and that the FIR lodged was false. Therefore, according to him reply could be treated as prayer for discharge, contemplated under Section 227 Cr.P.C.

Without going into the technicality the submission may be accepted. However, I find that the trial Court has not recorded any reason for framing the charge in the order dated 16.08.2017 at page 42 of the petition. That is perhaps because he recorded reasons and took cognizance on 16.08.2017 and also framed charge on the same date. Sections 227 & 228 Cr.P.C. read thus:

227. Discharge. – If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is

ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Perusal of the above provisions shows that the trial Court is required to record its reasons. It would not be harmonious interpretation that reasons would be required to be given only when order of discharge of the accused is passed. Recording of reasons is the *terra firma* of a judicial order. Hence, I hold that reasons will have to be recorded even for framing charge, particularly when the accused contests the framing of charge and claims discharge.

In my opinion, therefore, Section 227 Cr.P.C. contemplates giving of reasons when the accused contests framing of the charge. In the present case, however, I find that the second order impugned in this petition namely framing of charge is sans any reason though there was a contest raised by the accused. In that view of the matter, I think, the following order would subserve the interest of justice.

ORDER

- (i) Crl. Revision No.3159 of 2017 is partly allowed.
- (ii) The petition qua taking cognizance vide order dated 16.08.2017 is dismissed as withdrawn.
- (iii) The order dated 16.08.2017 at page 42 of the petition, framing charge, is set aside and the trial Court is directed to hear the petitioner afresh on the plea for discharge contemplated by Section 227 Cr.P.C.
- (iv) The petitioner, if he so advised may file application under Section 227 Cr.P.C. for discharge. The trial Court shall then consider the pleas raised by the parties, in accordance with law, and record the reasons for framing/non-framing of charge against the petitioner, as the case may be.
- (v) This shall be done within four weeks from today.
- (vi) The petitioner shall take dasti copy of this order and produce the same before the trial Court on or before 11.09.2017.

6th SEPTEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**