

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-24599 of 2018 (O&M)

Date of decision : 11.07.2018

Jasvir Kaur and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Raj Kumar Samyal, Advocate for the petitioner.

RAJ SHEKHAR ATTRI, J.(Oral)

Criminal Misc.No.23283 of 2018

Application is allowed subject to all just exceptions.

Document Annexure P-10 is taken on record.

Criminal Misc.No.M-24599 of 2018

Petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of order dated 10.06.2015, passed by the learned Judicial Magistrate Ist Class, Jagraon, vide which the application under Section 209 Cr.P.C., moved by complainant, has been allowed and order dated 10.06.2015 vide which the case has been committed to Sessions Court and both the petitioners have been put to face trial under Section 307 IPC and further for quashing of charge-sheet dated 04.08.2017 vide which the charges under Sections 307, 323, 506, 294, 379 read with Section 34 IPC have been framed against both the petitioners.

Initially, the petitioners had preferred a petition i.e. Criminal Misc.No.M-26552 of 2015, challenging the aforesaid order dated 10.06.2015 vide which the application under Section 209 Cr.P.C. was allowed and case was committed to the Court of Sessions for the offence under Section 307 IPC but said petition was dismissed as withdrawn vide order dated 06.11.2017, passed by the Co-ordinate Bench of this Court.

The facts in brief are that earlier the learned Magistrate had taken cognizance of the offences under Sections 307, 452, 506, 294, 323, 356, 379, 34 IPC and charges were framed accordingly. But subsequently, supplementary report under Section 173 (8) Cr.P.C. was presented without seeking any proper permission of the Illaqa/Judicial Magistrate for the purpose of reinvestigation. Learned Magistrate vide impugned order dated 10.06.2015, ignored further investigation while observing as under:-

“But at this stage perusal of the file as well as on application moved by prosecution it has come to light that the challan u/s 173 (8) Cr.P.C. has been filed by the Investigating Agency after re-investigating without seeking prior sanction of the Court, the court has to consider both the reports u/s 173 (2) and 173 (8) Cr.P.C., but inadvertently the report u/s 173 (2) Cr.P.C. has not been considered at the time of framing charge. I have also gone through the law laid down by the Hon'ble Supreme Court in case of 'Dharmatma Singh Vs. Harinder Singh and Anr.' reported in 2011 (3) RCR (Crl.) 39, whereby it is held by the forwarding a report to Magistrate that a person has committed an offence, but after investigating the further report u/s 173 (8) Cr.P.C. submitted that the person has not committed an offence. In such a situation it is for the Magistrate to form an opinion, whether the facts set out in two reports makes out an offence committed by the person.”

Consequently, he committed the case to the court of Session. The learned Addl. Sessions Judge, Ludhiana, after hearing the learned counsel for the parties, framed the charges against the petitioners for the

offences punishable under Sections 452, 307, 323, 506, 294, 356 and 379 read with Section 34 IPC.

It has been argued that once the Magistrate has taken cognizance, he has no authority to commit the case. This court is not agreeing with this contention. A Magistrate can commit the case at any stage of trial whenever he observed that the case is triable by the Court of Session. In Section 209 Cr.P.C., it is held that when a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the same.

It has been further argued that the Magistrate can act in Section 323 Cr.P.C.

This Court is of the view that the petitioners are entitled to get the benefit under Section 323 Cr.P.C. which reads as under:-

“If in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Sessions, he shall, commit it to that Court

However, he has ample power under Section 323 Cr.P.C.

In view of aforesaid discussion, no ground to intervene in the impugned orders is made out.

Therefore, the instant petition stands dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

11.07.2018
mamta-M

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No