

S.No.123

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

CRM-M-31766 of 2018 (O&M)

Date of Decision:27.07.2018

Ramesh Dalal

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Rajeshwar Singh Thakur, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

The challenge in the present case is to the charge framing order dated 04.01.2018 passed by the Judicial Magistrate Ist Class, Rohtak (Annexure P.7) whereby he has ordered that the charge be framed under Sections 147, 149, 283, 341 IPC and 8-A of the National Highways Act; as well as; to the revisional order dated 20.04.2018 Annexure P.9 passed by the Additional Sessions Judge, Rohtak, whereby the revision petition filed by the present petitioner against the above said order has been dismissed.

Although it would not have been appropriate to pass any detailed order touching any aspect of the case at this stage, however, the counsel for the petitioner has stated that he has the instructions to seek a decision qua all the arguments raised on behalf of petitioner. Hence, somewhat detailed discussion has been undertaken to deal and decide the arguments raised by the counsel.

While arguing the case, learned counsel for the petitioner has

submitted that although in the FIR, the name of the petitioner is mentioned as one of the persons present on the spot, however, it is also stated in the FIR; that the factum of the presence of the present petitioner was recorded in the videography and photography of the occurrence and from that material also, he can be identified. Counsel submits that the allegation in the FIR is that there were 400 and 500 persons present on the spot. In that situation, it cannot be said that the petitioner could be identified by the Police persons present on duty. Counsel further submits that regarding the occurrence of that day, the Police had specifically stated in another FIR No.66 dated 15.02.2016; that the incident was videographed. In that case that videography is also placed on record. However, in the present case that videography has not been made part of challan. Hence, it is contended by the counsel that since the fact regarding identity of the petitioner; to be present on the spot; is based upon the videography and that videography has not been made part of the challan, therefore, the identity of the petitioner has become doubtful and it cannot be said that he was present at the spot at the time of agitation. Counsel further submits that there is absolutely no material available on record from which the Magistrate could have arrived at a satisfaction that there exists a prima facie case against the petitioner so as to proceed further in the case and to frame the charge. Counsel further submits that in the present case, the Investigating Officer as well as the complainant happens to be the same person, therefore, the investigation itself stands vitiated.

Having heard learned counsel for the petitioner, this Court finds itself unable to agree with the submissions made by counsel for the

petitioner. At the stage of framing of the charge, the Court is required only to see that if there is some material to; prima-facie; presume that the accused might have committed the offence. This has been held by the Supreme Court that at this stage, the Court is neither required to appreciate the evidence critically to find out that the accused can be convicted of the offence or not, nor the Court is required to give detailed reasons for framing of the charge. The Court is only to record its tentative opinion showing application of mind, with reference to the material on the record. The Hon'ble Supreme Court has upheld this test in 2018(1) RCR (Criminal) 625, **State by the Inspector of Police, Chennai Vs. S. Silvi and another**, wherein the Supreme Court approvingly quoted the judgment rendered in 2010(4) RCR (Criminal)382, **Sajjan Kumar Vs. CBI** as under:-

Before considering the claim of the parties, it is useful to refer [Sections 227](#) and [228](#) of the Cr.P.C. which are reproduced below:

"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 the 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 subsection (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."

It is clear that the Judge concerned has to consider all the records of the case, the documents placed, hear the submission of the accused and the prosecution and if there is "not sufficient ground" (Emphasis supplied) for proceeding against the accused, he shall discharge the accused by recording reasons. If after such consideration and hearing, as mentioned in [Section 227](#), if the Judge is of the opinion that "there is ground for presuming" (Emphasis supplied) that the accused has committed an offence, he is free to direct the accused to appear and try the offence in accordance with the procedure after framing charge in writing against the accused."

In the present case, the test has been rightly applied by the trial Court. The framing of the charge has been upheld by the Revisional Court in revision. Material placed on record with report under Section 173 Cr.P.C contain the statements of the eye witnesses, who have stated that they were present on the scene of occurrence, and that they had seen the petitioner actively participating in the incident. Whatever be the ultimate probative

value of these statements, that cannot be analytically appreciated at the stage of framing of the charge. Hence, there is material on record which could not have been, legally, ignored by the trial Court while considering framing of charge. This material duly supports the charge against the petitioner on the face of it.

The next argument of the learned counsel that since despite admitting that there exists the videography of the incident, the Police have not brought the same on record in report under Section 173 Cr.P.C, therefore, the charge could not be framed against the petitioner, also does not find favour with this Court. As observed above, a bare perusal of the statements with the report under Section 173 Cr.P.C show that the petitioner has been specifically named in the statements of the persons who were posted on duty at that place at the relevant time. Therefore, irrespective of fact whether any videography is there or not, at this stage, the statements of the witnesses who were present on the scene of occurrence cannot be discarded by the Court. Otherwise also, it is for the prosecution to select the evidence which it considers appropriate to rely upon against an accused. Therefore, merely because the videography or the photography was done and the same is not part of the challan, the accused cannot take any advantage of it to challenge the charge. If at all he feels that he can substantiate his case from the alleged videography of the photographs, he can avail the same during the defence evidence. Otherwise also, even if the videography exists then also that would not be the conclusive proof to deny the presence of the present petitioner on the scene of occurrence.

Videography is a function of angles and directions of the camera, which can

very easily be avoided and/or which may not capture the entire scene of occurrence. Therefore, merely because the petitioner may not be seen in the photography or videography, does not exclude the presence of the petitioner at the spot. Hence, the argument that had the photography or videography been made part of the report under Section 173 Cr.P.C then the petitioner would have got benefit of the same is totally irrelevant.

The next argument of the counsel for the petitioner that the case has been investigated by the same Officer who himself was the complainant in the case, is also liable to note only to be rejected. Obviously, the said Officer happened to be on the spot on official duty. If an offence is committed in presence of a Police Officer, who is on duty in his area of operation; then he is duty bound to report the same to his Police Station. Not only that, unless he records reason under Section 41-A Cr.P.C, he is duty bound to arrest a person who has committed the offence in his presence. Hence, merely because a Police Officer has discharged his statutory function of making a report to the Police Station regarding a happening, being on the spot on his duty at the relevant time, would not make that Police Officer a complainant in the case. The term 'complainant' has not been defined in Cr.P.C. Section 2(d) of Cr.P.C defines only the 'Complaint' and it defines 'complaint' as the allegations communicated to the Magistrate. This sub-section specifically excludes any 'Police report' before investigation from the definition of the 'complaint'. The Explanation appended to this sub-section makes the Investigation Officer as a 'complainant' only after he completes the investigation and presents the report under Section 173 of Cr.P.C. Therefore, mere informing to the

Police Station regarding happening of the incident does not make the Investigating Officer a complainant. He becomes complainant only after he completes investigation and submits challan to Court. Hence, this argument of the learned counsel, per se, that simply because the Investigating Officer happen to have given the information to the Police Station regarding the incident, therefore, he would be deemed to be a complainant in this case, is not acceptable. Except to raise this argument at the conceptual level, the learned counsel for the petitioner has not pointed out, in any manner, as to how, the investigation by the said Police Officer was biased or has prejudiced the case of the petitioner. Hence, the argument raised by the learned counsel for the petitioner in this regard also deserves to be rejected.

The present petition has been filed to invoke inherent jurisdiction of this Court. The revisional Court has already upheld the order passed by the trial Court holding that there is no 'illegality' or 'impropriety' in the order. There can not be a second revision against such an order, being barred by Section 397(3). So, the 'legality' or 'propriety' of this order, as is to be adjudged in revision, cannot be appreciated again in petition under Section 482 Cr.P.C. The only interference by the High Court under Section 482 Cr.P.C can be if at a macro level it can be alleged and shown to the Court that the impugned order is a result of misuse of the process of the Court or it has caused injustice. But, by no means, it can be said that issuance of the process or framing of the charge or upholding of the same by the revisional Court of competent jurisdiction is any misuse of the process of the Court as such. Secondly, unless it is alleged and shown to the Court that order is passed on irrelevant or extraneous reasons, the order cannot be

said to be against the ends of justice. The petitioner has not even alleged anything of that kind. Re-appreciation of material on record to see the sufficiency of material for framing of charge is not, plainly, the scope of Section 482 Cr.P.C. Therefore, this Court is not inclined to interfere with the order passed by the Courts below.

In view of the above, finding no ground to interfere, the present petition is dismissed.

However, it is observed that nothing said herein above shall be deemed to be an expression on merits of the case during the trial.

July 27, 2018
renu

(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No