

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

CRM-M No.39992 of 2014

Date of decision: 6th December, 2018

Sarabjit Singh & others

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.S. Bhatia, Advocate for the petitioners.

Mr. Rakeshinder S. Sidhu, Asstt. AG, Punjab
for the respondent/State.

Mr. Jasmeet Mehta, Advocate for
Mr. L.M. Gulati, Advocate for the complainant.

FATEH DEEP SINGH, J.

This petition under Section 482 Cr.P.C. is by accused petitioners Sarabjit Singh, Major Singh and Kewal Singh who have sought quashment of orders dated 04.10.2014 passed by the Court of learned Additional Sessions Judge, Amritsar (Annexure P9) setting aside orders dated 16.11.2011 (Annexure P7) of the Court of learned Additional Chief Judicial Magistrate, Amritsar.

Heard Mr. G.S. Bhatia, Advocate for the petitioners;
Mr. Rakeshinder Singh Sidhu, Asstt. AG, Punjab for the respondent/State;
Mr. Jasmeet Mehta, Advocate appearing on behalf of Mr. L.M. Gulati,
Advocate for the complainant and perused the records.

A case by way of FIR No.213 dated 30.10.2008 Police Station Sultanwind, Amritsar under Sections 419, 420, 465, 467, 468, 471, 120-B IPC was registered against three accused who are petitioners before this Court. The Court of learned Additional Chief Judicial Magistrate, Amritsar through orders dated 16.11.2011 framed charges under Sections 452, 427, 380 IPC against the accused to which they pleaded not guilty. The State went in for revision against the said order on the grounds that charges under Sections 419, 420, 465, 467, 468, 471, 120-B IPC need to have been framed in addition to the charges so framed by the Court.

The Court of learned Additional Sessions Judge, Amritsar through impugned order dated 04.10.2014 allowing the revision had set aside the orders dated 16.11.2011 directing the trial Court to pass a fresh order after taking into consideration all the documents attached with the report under Section 173 Cr.P.C. Aggrieved over these findings, the accused are before this Court in this petition.

Appreciating the submissions of the two sides, the main grouse that is sought to be raised by learned counsel for the petitioners is over the observation of the Court below in the impugned orders detailed in para 11 and has submitted that the same was highly erroneous and uncalled for. The same reads as follows:-

“11. In my considered opinion it was a case where some speaking order should have been passed in the case while framing the charges. The allegations are in two parts

one regarding trespass etc, and others with regard to allegations pertaining to the claim to the land. The second part is not mentioned at all in the order of framing charge. No doubt the learned trial Court has to be satisfied prima facie only but in case the learned trial Court is to leave any offence for which the investigation agency has filed a report under Section 173 Cr.P.C. some reasoning should have been given by the learned trial Court while ignoring the offences for which a report under Section 173 Cr.P.C. was filed.”

On behalf of the State, Mr. Rakeshinder Singh Sidhu, Asstt. AG, Punjab assisted by Mr. Jasmeet Mehta, Advocate representing the complainant have sought to raise an argument that the Court below has lost sight of the fact what was there in the evidence collected in the report under Section 173 Cr.P.C. and has thus fallen into an error by merely framing charges under Sections 452, 427, 380 IPC instead of under Sections 419, 420, 465, 467, 468, 471, 120-B IPC as well.

The records reflect that the Court below upon presentation of report under Section 173 Cr.P.C., finding prima facie case, has framed charges under Sections 452, 427, 380 IPC. The position of law on this is well laid down, for which this Court seeks support from ‘**Kanti Bhadra Shah vs. State of West Bengal**’ 2000(1) RCR (Criminal) 407, where their Lordships have observed that where the trial Court decides to frame a charge, there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. The principle of prima-facie case is to be seen as has been laid down in ‘**R.S. Nayak vs. A.R.**

Antulay’ 1986 AIR (SC) 2045 and where the trial Court forms an opinion upon considering report under Section 173 Cr.P.C. and accompanying evidence including the documents, it may do so and is thus, not required to record its reasons for framing the charge necessarily; however, where the Court comes to a conclusion that no case prima-facie is made out, certainly to discharge the accused a speaking order needs to be passed. The learned State counsel assisted by learned counsel representing the complainant could not controvert this proposition of law so laid down by Hon’ble the Supreme Court.

Reverting back to the present case, the learned Additional Sessions Judge, Amritsar in the impugned findings, has certainly fallen into an error holding that it was a case where some speaking order should have been passed in the case while framing the charges; thus, remaining in oblivion to this settled proposition of law. The Court below further forgot the fact that it was dealing with a revision and powers under Sections 397 and 399 Cr.P.C. are very restricted and are only to comment upon the correctness of an order or a finding. However, the Court below has ventured into commenting, which was highly un-necessitated within the scope of revisional powers.

In the light of what has been detailed and discussed above, the impugned order certainly is bad in law necessitating intervention by this Court by exercise of inherent powers under Section 482 Cr.P.C. The impugned order of the revisional Court is hereby set aside and the matter

is sent back to the trial Court to proceed ahead into it as per law. Parties through their counsel are directed to appear before the trial Court on 28.01.2019. The petition stands allowed and disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

December 6, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No