

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.M-41026 of 2016

Date of decision:2.8.2018

Devinder Singh

...Petitioner

v.

State of Punjab

...Respondent

....

(2) Criminal Misc. No.M-41042 of 2016

....

Devinder Singh

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Anil Kumar Garg, Advocate for the petitioner.

Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This order will dispose of the above mentioned two petitions filed under Section 482 Cr.P.C. for quashing/setting aside the impugned orders dated 12.10.2016 passed by learned Sessions Judge, Sangrur and all subsequent proceedings arising therefrom including FIR No.14 dated 16.3.2007 registered for the offences under Section 13(1)(c)(d) read with

Section 13(2) of the Prevention of corruption Act, 1988 and Sections 465, 467, 468, 471, 511 and 120-B IPC and FIR No.72 dated 26.12.2006 registered for the offences under Sections 409, 420, 467, 468, 471, 477-A and 120-B IPC and Section 13(1)(c)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 respectively.

Notice of motion has been issued in these cases.

Mr. Pawan Sharda, learned Senior Deputy Advocate General, Punjab, has appeared on behalf of the respondent-State and contested these petitions.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

At the time of arguments, learned counsel for the petitioner argued only on one point that as per Section 228 Cr.P.C. when the Court of Session passes an order finding that all the offences are triable by Magistrate, then the Court of Session can transfer the case to the Magistrate, but after framing of the charge. He further argued that the provisions are mandatory and the Court of Session is to frame the charge and then to send the case to the Magistrate. Therefore, he argued that the orders passed by the learned Sessions Judge, Sangrur, be set aside to that extent and the matter be remanded back for framing of the charges by the Court of Session and then send the cases to the Magistrate.

On the other hand, learned State counsel argued that the provisions of Section 228 Cr.P.C. are not mandatory. Rather, it is discretion that is either the Court of Session can frame the charge or it can send it

without framing the charge, which will be framed by the lower Court.

I have gone through the provisions of Section 228 (1)(a) Cr.P.C., which are as under:-

“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, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) xx xx xx xx

(2) xx xx xx xx xx.”

The provisions of Section 228 Cr.P.C. itself show that the Court of Session may frame charge and these provisions are not mandatory. It is the discretion of the Court of Session that it can frame the charge and then send it to the Magistrate or it can send the case to the Magistrate under Section 228 Cr.P.C. without framing the charge and in that eventuality the Magistrate will frame charge.

Keeping in view the above facts and circumstances, I do not find any merit in the argument of the learned counsel for the petitioner to remand the cases to the Court of Session.

Therefore, finding no merit in these petitions, the same are dismissed.

August 2, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No