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

CRM-M-52717-2018

Date of decision-30.11.2018

Colonel Subhash Chander Kohar (Retd)

....Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. J.S.Bedi, Senior Advocate with
Mr. Lovekirat S.Chahal, Advocate for the petitioner.

MANOJ BAJAJ, J.

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 29.10.2018 passed by Addl. Sessions Judge, SAS Nagar, Mohali, dismissing the petitioner's revision petition against the order of framing of charges dated 30.08.2016 passed by the Judicial Magistrate Ist Class, Derabassi. These orders have arisen from case FIR No.142 dated 02.06.2010 under Sections 447 and 506 of Indian Penal Code and Sections 33 and 63 of the Indian Forest Act, 1927 registered at Police Station Zirakpur, District SAS Nagar.

The FIR in question was registered on the basis of statement given by the complainant (Respondent No.2) T.K.Behara, IFS wherein it is alleged that an attempt has been made by the accused to take illegal possession of the Government land in front of Chhatbir Zoo. It is mentioned that the petitioner Subhash Chander Kohar is making regular

attempts to take illegal possession of the Forest Department land. According to the complainant, the accused was stopped by the field staff and range officer and a complaint was also given to SHO Zirakpur. On these broad allegations, the FIR was registered against the petitioner.

Learned Senior counsel appearing on behalf of the petitioner has pointed out that the land in question was originally owned by Jaswinder Singh and Balvir Singh who had made an application on 29.06.2006 (Annexure P-1) for permission of passage to their farm house. The said permission was accorded to them on 06.11.2006 as reflected in Annexure P-3. The land in question was purchased by the company on 14.07.2006. It is pointed out that before investigation there were two inquiries (Annexures P-13 and P-14) recommending the filing of cancellation in FIR in question. However, after completion of investigation, the challan under Section 173 (2) Cr.P.C was filed in the Court on 23.04.2013. Thereafter, an application was moved by accused for further investigation and the same was allowed by the trial Court vide order dated 03.07.2014 (Annexure P-17). Pursuant to this, permission was granted by the Court, and further investigation was carried and a cancellation report dated 21.05.2015 (Annexure P-18) under Section 173(8) Cr.P.C. was submitted.

Learned counsel has invited the attention of the Court to the impugned order dated 30.08.2016 (Annexure P-22) whereby the trial Court has proceeded to form an opinion to frame charges. The order reads as under:-

“Heard. Finding a prima facie case under Section 447,

506 IPC and Section 32, 33 and 63 of Wild Life Protection Act is made out against the accused. Hence, Charge framed, to which accused pleaded not guilty and he claimed trial. Let Pws be summoned for 15.10.2015.”

A perusal of the order reveals that the trial Court at this crucial stage has not at all taken into account the challan dated 23.04.2013 and the cancellation report dated 21.05.2015 filed under Section 173(8) Cr.P.C. It is apparent that the order dated 30.08.2016 does not reflect that the Court has examined the relevant material before forming an opinion that the trial is required. Aggrieved against this, revision was carried and the said revision was dismissed vide impugned order dated 29.10.2018 (Annexure P-24).

The stage of framing of charges is an important stage where the Court is supposed to form an opinion after considering the relevant material on record and to decide as to whether the trial is warranted or not. Of course, at this stage the Court is not supposed to hold a mini trial, but at the same time, it is incumbent upon the Court to examine the material carefully to build an effective opinion.

The revisional Court has also failed to notice that after further investigation a cancellation report stood submitted before the trial Court. Learned Additional Sessions Judge proceeded to decide the revision on two grounds firstly that the allegations regarding offence under Section 506 IPC is a matter of trial and secondly on the ground that argument of delay in the framing of charges as raised is not made out. The approach adopted by the revisional Court is equally erroneous in law as it has failed to exercise the

jurisdiction vested in it by refusing to interfere with the order dated 30.08.2016 passed by the trial Court.

In “Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao” 2012 (4) R.C.R.(Criminal), Hon'ble the Supreme Court has held as under:-

11) 11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

Exercise of jurisdiction under Sections 227 and 228 Criminal Procedure Code

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed

the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the

ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

The above observations have been made in respect of sessions trial, however, the exercise is same at the stage of framing the charges in a magisterial trial as contemplated under Sections 239 and 240 Cr.P.C.

In view of the above discussion, the impugned orders dated 30.08.2016 (Annexure P-22) and 29.10.2018 (Annexure P-24) are set aside and the case is remanded back before the Magistrate to pass the order afresh after taking into consideration the entire material by passing a speaking order.

Disposed off.

(MANOJ BAJAJ)
JUDGE

30.11.2018

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No