

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-53766 of 2018

DATE OF DECISION: DECEMBER 5, 2018

SUKHPAL SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. J.S. MEHNDIRATTA, ADVOCATE FOR THE PETITIONER.

MANOJ BAJAJ, J.

This is a petition filed under Section 482 Cr.P.C. for quashing the order of framing of charge dated 28.11.2016 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Patiala, formal charge sheet dated 28.11.2016 and the judgement dated 22.10.2018, passed by the Addl. Sessions Judge, Patiala dismissing the revision filed against the order of framing of charge.

An FIR No.174 dated 27.08.2015 under Sections 420, 465, 467, 468, 471, 120-B IPC was registered at Police Station Civil Lines, Patiala against the petitioner and other accused persons. It has been alleged in the said FIR that the petitioner alongwith co-accused committed an offence by preparing a forged birth certificate of Paramjit Kaur and death certificate of Jasbir Kaur and Narain Dass facilitating one Balwinder Singh to show Paramjit Kaur as daughter of Narain Dass before the Revenue Authorities and claiming ownership of the property of the complainant measuring 3 bighas and 9 biswas situated at Gobind Bagh, Patiala. After investigation,

the police submitted a report under Section 173(2) Cr.P.C. against the petitioner and others for the offences under Section 420, 465, 467, 468, 471 and 120-B IPC.

Learned counsel for the petitioner has contended that a parallel departmental enquiry was also marked against the petitioner and the police also found that the services of the petitioner was outsourced by the Municipal Corporation, Patiala in the month of July, 2014. Whereas, on 6.11.2013, on an inspection conducted by the Director, Health Services and the Civil Surgeon, Patiala, tampering and overwriting were found in the register and thus, the petitioner had no role to play in the alleged tampering and overwriting. On the basis of same, a supplementary report under Section 173(8) was submitted before the Judicial Magistrate 1st Class, Patiala. But the trial Court without considering the same, ordered framing of charges against the petitioner. The revision filed against the said order was also dismissed by the learned Addl. Sessions Judge, Patiala.

Learned counsel for the petitioner has invited the attention of this Court to the impugned order dated 28.11.2016 (Annexure P-4), whereby the trial Court has proceeded to form an opinion to frame charges against the petitioner and other co-accused. The same reads as under:-

“Today case was fixed for consideration on charge. Heard on the point of making charge. Prima facie charge U/s 420/465/467/468/471/10-B IPC made out against accused and they have been charge sheeted accordingly. Now case is adjourned to 27.2.2017 for Pws.”

A perusal of the order reveals that the Court, at this crucial stage, has not at all taken into account the challan dated 18.12.2015 and the cancellation report dated 4.2.2016 filed under Section 173(8) Cr.P.C. It is apparent that at this stage, the Court is to make up its mind whether the trial is required or not, proceeded to frame charges in mechanical manner. Aggrieved against this, revision was preferred and the said revision was dismissed vide impugned order dated 22.10.2018 (Annexure P-6).

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 committed a serious error in law in observing that the Magistrate has looked into both the reports, under Section 173(2) Cr.P.C. and Section 173(8) Cr.P.C. and therefore, has proceeded to frame the charges. It has also been observed that the Court is not bound by the report which is given by the investigating agency. Unfortunately, the revisional Court has not carefully gone through the order passed by the Magistrate which does not at all refer to the two reports on record, much less without any discussion, before framing the charges.

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."*

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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, both the impugned order dated 28.11.2016 (Annexure P-4) and 22.10.2018 (Annexure P-6) are set aside and the case is remanded back before the Magistrate to pass the speaking order afresh after taking into consideration the entire material.

Disposed off.

December 5, 2018
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No
Whether Speaking/Reasoned : Yes/No