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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3489-2016

Date of Decision : December 15, 2018

Kamalkant

... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr.Gautam Dutt, Advocate,
and Mr. Deepinder Brar, Advocate,
for the petitioner.

Mr.Ajay Pal Singh Gill, DAG, Punjab,
for respondent-State.

SHEKHER DHAWAN, J.

Present revision petition is against the order dated 20.07.2016 passed by learned Chief Judicial Magistrate, Mansa in Criminal Case No.265/3/W/11 titled **State Vs. Mukesh Kumar and others**", whereby charge was framed against the present petitioner and other co-accused under Sections 420, 465, 467, 468, 471 and 120-B IPC along with Section 25/54/59 of the Arms Act in case bearing FIR No.64 dated 15.04.2011 registered at Police Station City-2, Mansa.

2. Learned counsel for the petitioner contended that the name of the petitioner had cropped up in the investigation. Challan was presented

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in the Court and learned Chief Judicial Magistrate, Mansa framed charge against the petitioner and other co-accused vide order dated 20.07.2016.

3. Learned counsel for the petitioner further contended that the allegations against the petitioner are that he was indulging in manufacturing and selling of country made pistols and revolvers and other weapons from unauthorized and unlicensed factories and then used to sell those country made pistols, revolvers and other ammunition to general public.

4. Learned counsel for the petitioner also contended that the petitioner was already in police custody of Palwal and was brought by the Mansa Police from Palwal vide DDR No. 11 dated 17.06.2012. The name of the petitioner was disclosed by co-accused Mahesh Kumar and on the basis of that disclosure statement, present petitioner allegedly got recovered two pistols of .32 bore, which were taken in police possession.

5. As per learned counsel for the petitioner, there is only one recovery memo and that shows recovery of two pistols and two magazines which was effected on 7.5.2011. Thereafter recovery of other two pistols and two magazines effected by SI Pritpal Singh is *prima facie* falsified in terms of disclosure statement dated 27.04.2011. The petitioner has been falsely implicated in the case after being brought by Punjab Police from Palwal and learned Magistrate has completely ignored all these facts while framing charge against the petitioner.

6. Learned State counsel while arguing on this point contended that learned trial Magistrate has already considered all these aspects. More over, it is settled proposition of law that at the time of framing of

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charge, the Court is to see *prima facie* case which certainly establish on the file. More so, the trial is already complete and the main recovery witnesses have been examined. Charge has been framed on the basis of alleged recovery having been effected on the basis of disclosure statement so made by the accused while in custody and thereafter recovery having been effected in pursuance of the said disclosure statement. More so, charge has been framed under Section 120-B as well. So, all the accused are liable to be prosecuted for the alleged commission of offence and present revision petition is liable to be dismissed.

7. Having considered the above submissions, this Court is of the considered view that there is no dispute on the legal proposition that at the time of framing of charge, the Court is to see the report submitted under Section 173 Cr.P.C. and record available on the file. As per material available on the file, the name of the petitioner was added as per disclosure statement of co-accused Mahesh Kumar. Recovery of pistols was effected from the possession of the accused which is admissible in evidence as per Section 27 of the Evidence Act, 1872.

8. It is settled proposition of law that at the time of framing of charge, the Court is to see whether a *prima facie* case is made out or not. Similar view was taken by Hon`ble Apex Court in **Mauvin Godinho Vs. State of Goa, 2018(3) R.C.R. (Criminal) 385**, wherein it was held as under :-

“12. At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges Under Section 227 of the Code

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of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the Accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. 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....”

9. Identical view was taken by Hon`ble Apex Court in **State of Madhya Pradesh Vs. Rakesh Mishra, 2015(2) R.C.R. (Criminal) 573,** and it was observed by Hon`ble Apex Court that in cases of matter based upon the police investigation and report having been filed by the Police, only charge sheet along with the accompanying material is to be considered at the stage of framing of charge so as to satisfy whether a *prima facie* case is made out. It has to be the subjective satisfaction of the Court framing charges.

10. Resultantly, there is no merit in the present revision petition. However, at this stage, the Court cannot ignore the aspect that most of the witnesses have been examined in the case before the Court below and the most appropriate remedy would be to direct learned trial Magistrate to conclude the trial expeditiously.

11. In view of the above, learned trial Court is directed to make serious efforts to expedite and conclude the trial within six months from the date of receipt of copy of this order.

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12. With the above directions, the present revision petition stands disposed of.

(SHEKHER DHAWAN)
JUDGE

December 15, 2018
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes