

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

**Criminal Misc.No.M-8951 of 2018 (O&M)**

**Date of decision : 17.05.2018**

Suresh Kumar and others

... Petitioners

Versus

State of Haryana and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

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Present: Mr. Vivek Sheoran, Advocate  
for Mr. Ajit Singh Lamba, Advocate  
for the petitioners.

Mr. Raj Kumar Makkad, DAG, Haryana.

Mr. Rajat Mor, Advocate  
for respondent No.2.

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**RAJ SHEKHAR ATTRI, J.(Oral)**

The petitioners have preferred the instant petition under Section 482 Cr.P.C., for quashing of order dated 17.11.2017, passed by the learned Addl. Chief Judicial Magistrate, Hisar, in case FIR No.526, dated 27.06.2016, registered under Sections 147, 149, 307, 323 IPC and Section 25 of the Arms Act (Sections 307, 147 IPC and Section 25 of the Arms Act were deleted during investigation and Sections 148, 325 and 285 IPC and Section 27 of the Arms Act were invoked), at Police Station Sadar, Hisar, whereby Section 307 IPC has been said to be made out against the petitioners while allowing the application under Section 209/323 Cr.P.C. moved by respondent No.2 and the case has been committed to the court of Session, Hisar and all subsequent proceedings arising therefrom including

the order on charge dated 04.01.2018 (Annexure P-4) and charge-sheet (Annexure P-5).

Briefly stated, it is a case of prosecution that the complainant Sandeep made a statement before the police that on 25.06.2016 at about 6:30 p.m., he was coming back from the side of the pond alongwith his dog. When he reached near the house of one Ram Kumar, then Dharam Parkash and Dharam Raj had fired upon him but he escaped unhurt. Meanwhile, Sandeep son of Dharam Parkash and Ravi son of Dharam Pal armed with wooden sticks attacked on the left leg of complainant. Then he raised alarm 'mar diya-mar diya'. After hearing his noise, Ranbir, cousin of the complainant, came there. Then Dharamraj came in a white coloured Maruti car in which Mandeep, Simant alias Simmi were sitting. Dharamraj stopped the car and boarded Sandeep and Ravi in the car. Then Dharamraj had run over his vehicle upon Ranbir with an intention to kill him and again he got his car reversed and tried to run over his car again on Ranbir Singh. Thereafter they reversed their car towards the cattle shed of complainant where complainant's aunt (Mausi) Santro, was standing. Dharamraj exclaimed that she had created all the problems and ran over his car upon her with an intention to kill her. Thereafter, all the accused drove away from the spot in the same vehicle. On the statement of complainant, FIR was registered. During investigation, Dharamraj and Simant were found innocent and offence under Section 307 IPC was deleted. However, when the final report was submitted before the learned Addl. Chief Judicial Magistrate who vide his impugned order dated 17.11.2017 while exercised the power under Section 209 and 323 of the Code of Criminal Procedure had ordered to commit the case against Dharam Prakash, Suresh Kumar,

Arvinder, Sandeep, Dharampal and Mandeep to the Court of Sessions. On receipt of the case by way of commitment, learned Sessions Judge framed a charge against them for the offences under Section 307, 148, 34, 323, 325, 285, 149 IPC and trial was initiated.

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

The petitioners seek quashment of the order dated 17.11.2017, passed by the learned Addl. Chief Judicial Magistrate, Hisar as well as order dated 04.01.2018, passed by the learned trial court vide which charges were framed against them. It is well settled that the criminal proceedings may be quashed when no prima facie case is made out and it appears from the face of the record that continuation of the proceedings will abuse the process of law. The Hon'ble Supreme Court in **State of Haryana and others versus Ch. Bhajan Lal Ors.** has made the following observations:-

*“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

1. *Whether the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Whether, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where*

*there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

So far as, framing of charge is concerned, it is well settled that a criminal Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

In ***State of M.P. v. Mohanlal Soni, 2000(3) RCR(Criminal) 452***, Hon'ble Supreme Court has held :

"7. The crystallised judicial view is that at the stage of framing charge, the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

It was furthermore observed :

"....As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to

produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed."

In the case in hand, a specific role has been attributed to the petitioners. For the purpose of framing of charge under Section 307 IPC, this court has to consider whether an offender has an intention to commit the murder of the victim and he make the preparation and the attempt for the same. Herein, the intention of the petitioners has been prima facie made out to commit the murder of the victims by running them over in his vehicle and all of them had suffered serious injuries. To the mind of this Court, there is adequate material available on the record against the petitioners for framing a charge. Therefore, no case to quash the said FIR is made out.

In view of above discussion, the instant petition is without any merit and the same is dismissed. However, nothing express above will affect the merits of the case.

**17.05.2018**  
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**( RAJ SHEKHAR ATTRI)**  
**JUDGE**

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |