

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

CRR No.2249 of 2018 (O&M)

Date of Decision: December 6 2018

Amrinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Mayur Karkra, Advocate
for the petitioner.

Mr. Randeep Khaira, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal revision has been filed seeking to challenge the order dated 06.04.2018 passed by the Additional Sessions Judge, Patiala whereby, charges under Sections 498-A, 323, 328 of Indian Penal Code have been framed against the petitioner herein.

2. In brief, the facts of the case, as alleged in the FIR are that, a marriage was solemnized between the petitioner herein and complainant- Gurpreet Kaur in the year 2014 as per Sikh rites and ceremonies, out of which wedlock one son namely Amninder Singh was born. As per allegations levelled in the FIR, on 29.04.2017, an altercation took place between the complainant and her mother-in-law Kashmir Kaur and sister-in-law Paramjit Kaur and after that they incited the petitioner and got her

beaten up. It has been further alleged that after some time, her husband, brother-in-law, mother-in-law, sister-in-law and father-in-law entered her room and her brother-in-law caught hold of her legs and her husband caught hold of her arms and thereafter, her mother-in-law brought a poisonous medicine. Her sister-in-law took the medicine from her mother-in-law and poured the same in her mouth. After getting herself released from the clutches of the accused persons, the complainant informed her aunty's (Bua's) daughter about the incident. Since, she had informed her aunt's daughter about the poisonous substance having been administered to her, she was then taken to the hospital by her husband and brother-in-law. It has been further alleged that her mother-in-law and sister-in-law used to pressurize her to bring back her ornaments.

3. After the registration of the FIR, the matter was inquired by the Deputy Superintendent of Police, Rural and during inquiry presence of Darshan Singh, Paramjit Kaur, Kashmir Kaur and Paragat Singh was not proved at the time of the alleged incident and allegations levelled against them were found to be false. Final report was submitted in the court. Subsequently, on the basis of final report, the Addl. Sessions Judge, Patiala by an order dated 06.04.2018 framed the charges under Sections 328, 323, 498-A of Indian Penal Code, which order is under challenge in the instant criminal revision.

4. Learned counsel appearing on behalf of the petitioner herein contends that in the final report submitted, it is clearly mentioned that opinion of the doctor was sought by the Investigating Officer regarding the quantity of the poisonous medicine given to the complainant and also if the

same could have been dangerous to her life, to which the doctor gave opinion that *“there was no signs and symptoms of OPC poisoning.”* However, despite the said fact being brought to the notice of the trial court, the petitioner herein has been charged under Section 328 of Indian Penal Code. It is argued that even as per the FIR and the final report, other than beating the complainant and holding her arms, the act of administering poison has not been attributed to the petitioner. It is also contended that earlier also, the complainant had made a false complaint against the petitioner and his family members at Police Station Patran, but later on the same was withdrawn by the complainant, after taking an amount of ₹ 6 lacs through cheque from the father of the petitioner. It is also submitted that thereafter, the complainant also moved another complaint through her father with similar allegations and during the inquiry, a report was submitted by the DSP, Patiala in which the allegations seeking dowry and giving beatings to her were found to be false and the said complaint was accordingly consigned. It is also argued that in the final report, Section 498-A of Indian Penal Code has been added only because of one line in the statement whereby, she alleged that her mother-in-law and sister-in-law used to pressurize her to bring her gold ornaments back .

5. Per contra, learned counsel appearing on behalf of the respondent-State argues that the charges have been rightly framed by the trial court after due application of mind.

6. I have heard learned counsel for the parties and with their assistance have perused the pleadings .

7. In the case in hand, the petitioner herein has been charged

under Sections 498-A, 323, 328 of Indian Penal Code. It is the contention of the petitioner herein that in the final report, it has been mentioned that opinion of the concerned doctor was sought regarding the amount/quantity of poisonous substance which was given to the complainant, on which the doctor has given the opinion that there was no signs and symptoms of OPC poisoning and despite the said opinion, charges have been wrongly framed under Section 328 of Indian Penal Code. It is also the contention of the petitioner that only on the basis of the statement of the complainant that her mother-in-law and sister-in-law used to tell her to bring ornaments from her parental house, charge under Section 498-A of Indian Penal Code has been framed.

8. At the stage of framing of charge, the Court is not concerned with the proof of allegations but has to *prima facie* form an opinion whether there is a probability that the accused has committed an offence, which if put to trial could prove his guilt. The power to quash criminal proceedings has to be exercised very sparingly and that too in the rare of the rarest cases. It is only if allegations are absolutely absurd and improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied, then the Court may interfere. In ***Amit Kapoor vs. Ramesh Chander and another, 2012(4) RCR (Criminal) 377***, the Apex Court while discussing the scope and distinction of provisions of Section 227 (Discharge) and 228 (Framing of charge) of Cr.P.C. has held as under (para 10 and 11):

“Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code.

Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge.”

“There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

“11. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

9. In the instant case, the trial court has framed the charges on the basis of final report submitted by the police along with the material/evidence collected by it during the course of investigation. In the case of **Sajjan Kumar vs. CBI, (2010) 9 SCC 368**, the Supreme Court took note of the principles laid down in **Union of India vs. Prafulla Kumar Samal and another (1979) 3 SCC 4** while dealing with question as to what material is to be considered while framing of charges:

“ 14) In *Prafulla Kumar Samal (supra)*, the scope of [Section 227](#) of the Cr.P.C. was considered. After advertent to various decisions, the Supreme Court enumerated the following principles:

(1) That the Judge while considering the question of framing the charges under [Section 227](#) of the Code 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.

(2) 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.

(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on.** This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial." (emphasis supplied).

10. Section 328 of Indian Penal Code provides for punishment when hurt is caused by means of poison etc. with an intent to commit an offence. Whereas, in the present case, the final report (Annexure P-4) includes the opinion of the doctor of Rajindra Hospital, Barnala (Annexure P-5) which does mention that no poison was detected. Even the charges under Section 498A of Indian Penal Code as framed against the petitioner needs a re-look in view of the allegations made and the inquiry report. Under these circumstances, the impugned order dated 06.04.2018 framing charges is not sustainable.

11. However, this court instead of quashing the charge-sheet, deems it appropriate to remand the matter back to the trial court to frame the charges afresh, keeping in view the final report and the documents annexed with it. In view of the above, the impugned order dated 06.04.2018 is set aside and the matter is remanded back to the trial court to frame the charges afresh, with the aforesaid direction.

12. Needless to say, anything observed or said by this court shall not prejudice the mind of the court below in any manner, which is only for the purpose of deciding the instant criminal revision.

December 6, 2018

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

