

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

**CRR-716-2018 (O&M)
Date of decision:14.03.2018**

Prem Saran Bansal

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. R.S. Bajaj, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

The instant revision petition is directed against the order dated 11.01.2018 (Annexure P-1) passed by learned Additional Sessions Judge, Ropar, whereby charges have been framed against the petitioner under Sections 408/409/120-B IPC and Sections 13(1)(C) and 13(1)(D) of the Prevention of Corruption Act, 1988.

Briefly noticed that FIR No.11, dated 26.07.2013 came to be registered at Police Station Vigilance Bureau, Ludhiana under Sections 13(1)(C) and 13 (1)(D) read with Section 13(2) of the Prevention of Corruption Act, Sections 409/420/12-B IPC and Sections 18(C) and 18(A) of the Drugs and Cosmetics Act, 1940 in pursuance to raids having been conducted by a team constituted based on secret/special information. The team consisted of DSP, Vigilance Bureau, Ropar, CMO, Vigilance Bureau, Punjab, Chief Vigilance Officer, office of Health Department, Punjab, Drug Inspector, Ludhiana and Drug Inspector, Patiala. As per prosecution, raid was conducted at the house of the petitioner i.e. House No.127, Krishna Mandi,

Vivekanand Chowk, Ward No.10, Kurali and where from 16 types of medicines were recovered. Information having been received that the petitioner has one more house on the outskirts of Kurali, where he had also constructed certain shops and flats, a number of medicines were recovered from boxes lying adjacent to and outside the house.

Petitioner has been charged for offence under Section 120-B IPC on the allegation that he has acted in furtherance of a conspiracy along with other co-accused to embezzle and misappropriate certain medicines which were otherwise meant for supply in Government Hospitals alone and were not for sale. Charges under Sections 408/409 IPC have been framed on the ground that the petitioner being an employee of the Health Department and having been entrusted with certain medicines meant only for Government Hospitals has committed breach of trust in the capacity of a public servant. Against the charge of misappropriation of medicines meant for Government Hospitals supply only and with a fraudulent intent offence under Section 420 IPC has also been cited. Petitioner has been charged for offence under Section 13(1)(C) and 13(1)(D) of the Prevention of Corruption Act having allegedly misappropriated by resorting to corrupt or illegal means and to gain pecuniary advantage by using his position as a public servant certain medicines which were not for sale and to be supplied to Government Hospitals.

Counsel for the petitioner has argued that the impugned order framing charge against the petitioner is totally against law and facts of the case. House No.127, Krishna Mandi, Vivekanand Chowk, Ward No.10, Kurali does not belong to the petitioner but rather is in the name of his

mother where his parents resides. The medicines allegedly recovered from such house were meant for the treatment of parents of the petitioner for their medical ailment and such medicines were not banned and as such, no offence is made out qua such recovery. Insofar as the alleged recovery of eight items and medicines from certain bushes outside and adjacent to the house of the petitioner, it is contended that such recovery is fabricated as the recovery memo does not bear signatures of the Investigating Officer and witnesses. Out of the eight items, petitioner had produced details before the Investigating Agency that such medicines were duly accounted for in the records of the department. It is vehemently contended that the total quantity of the medicines received from the petitioner in discharge of his official duties, certain quantity had been dispatched to different places/Government Hospitals and the balance was still lying or are duly accounted for. Counsel prays that under such circumstances, the impugned order framing charge against the petitioner cannot sustain and the same be set aside and petitioner be discharged.

Having heard counsel for the petitioner at length, this Court is of the considered view that the impugned order dated 11.01.2018 (Annexure P-1) does not suffer from any infirmity.

Petitioner was working on the post of Store Keeper, office of Civil Surgeon, Ropar. Raids were conducted by a duly constituted team of officials and recovery of medicines has been effected from a residential premises stated to be occupied by parents of the petitioner as also from adjoining to the residential house of the petitioner.

At the stage of framing charge, the Competent Court had to see

the prima facie complicity of the petitioner in the commission of the offence.

At such stage, the Court is not to sift through the evidence and to form an opinion with regard to chances of conviction of the accused. That apart, the trial Court has got jurisdiction under Section 216 Cr.P.C. to modify the charges or under Section 221(2) Cr.P.C. to pass any order on appreciation of evidence in case Court is satisfied that some offence has been committed different from the offence for which the petitioner has been charged. It would always be open for the Court to pass an order of acquittal or pass sentences for a lesser offence for which petitioner has not been charged.

It has gone uncontroverted during the course of arguments that prior to passing of the impugned order dated 11.01.2018 (Annexure P-1) framing charge against the petitioner and other co-accused, an application moved by the present petitioner seeking discharge had already been declined vide order dated 05.12.2017.

In the totality of circumstances, no intervention in the matter is called for.

Petition is dismissed.

It is clarified that it would be open for the petitioner to raise all pleas as may be available to him in his defence and in accordance with law before the trial Court.

14.03.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |