

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

CRM No.M-30525 of 2014 (O&M)

Date of Decision: July 04, 2019

Krishan Kumar Chadha and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikram Chaudhri, Senior Advocate with
Mr.Vipul Sachdeva, Advocate
for the petitioners.

Mr.Prabhjot Singh Walia, AAG, Punjab
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondent State of Punjab, for quashing of order dated 19.08.2014 passed by learned Addl. Sessions Judge, Amritsar, in case FIR No.16 dated 24.01.2013 under Sections 295, 186, 332, 333 read with Section 34 IPC (initially Sections 307, 323, 294, 148 and 149 IPC incorporated in FIR but subsequently deleted), whereby the application filed by the petitioners not to take cognizance of the committal proceedings was dismissed, as entire proceedings being sought to be initiated against the petitioners are without jurisdiction, null and void etc.

Notice of motion was issued. Learned State counsel appeared

and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that the application was filed by the petitioners with a prayer not to take cognizance against them and for their discharge in this case. The challan in the present case was presented before the court of learned JMIC, Amritsar, where the charges for the offence punishable under Sections 295, 186, 353, 332 and 333 read with Section 34 IPC were framed. Thereafter, one of the prosecution witness was also examined. However, later on, this case was committed by the Court of learned JMIC, Amritsar, vide order dated 04.07.2014 as one of the offence under Section 333 IPC being triable by the Court of Session. Before the lower Court, it was argued that accused be discharged in view of the violation of mandatory procedure, which has not been adopted as per provisions of Cr.P.C. It is also argued that Sales Tax staff illegally visited the premises of the accused-petitioners with malafide intention. No occurrence has taken place and contents of the FIR are false. It is further argued that complainant and his team members had caused injuries to the staff of the accused-petitioners and no action has been taken against them and accused-petitioners have been wrongly and falsely implicated. It is next argued that accused-persons have been wrongly charged before committing the matter to the Court of Session without following the provisions of Section 195 Cr.P.C., which strictly bars the Court from taking cognizance under Section 186 Cr.P.C.

Learned trial Court, after hearing the parties, dismissed the application vide impugned order dated 19.08.2014, finding prima facie case

for offence punishable under Sections 295, 186, 353, 332 and 333 read with Section 34 IPC against the accused-petitioners.

The copy of the report under Section 173 Cr.P.C. has been placed on record. Copy of the order framing the charge has also been placed on record. The perusal of the order which the accused have been charged, shows that they have been charged under Section 333 read with Section 34 IPC, which is triable by Court of Session. The Magistrate cannot frame the charge of any offence, which is exclusively triable by Court of Session. It looks that inadvertently this fact has not come into the knowledge of the Magistrate at the time of framing of the charge under Section 333 IPC but when this fact came to his notice, the Magistrate committed the case to the Court of Session as one of the offence is exclusively triable by Court of Session. No illegality has been committed by learned Magistrate while committing the case to the Court of Session. Rather, he has committed the case as per law. The Magistrate can commit a case at any stage when he/she finds that one of the offence from the record, is exclusively triable by Court of Session. Therefore, the case in question has been committed legally and as per law. The Court of Session has every right to take cognizance. In no way, it can be held that any mandatory procedure has not been followed while committing the case. No reason or ground has been mentioned as to why the Court of Session should not take cognizance.

The argument that a false case has been planted or some injuries have been caused by the complainant side etc., is the defence version, which is to be proved by the accused. At the time of framing the charge, the Court is only to see prima facie case. Nothing has been argued

at the time of arguments as to how offence under Section 333 IPC is prima facie not made out. Rather, it looks that charges were framed in the year 2013 by the Magistrate under Section 333 IPC wrongly but even then, the order framing the charges has not been challenged by the present petitioners.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Durgacharan Naik and others vs. State of Orissa, AIR 1966 SC 1775***, in which, it is held as under:-

“6. In the present case, therefore, we are of the opinion that Section 195 of the Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under Section 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under Section 186, Indian Penal Code.

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8. We have expressed the view that Section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of Section 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. On behalf of the appellants Mr Garg suggested that the prosecution of the appellants under Section 353, Indian Penal Code was by way of evasion of the requirements of Section 195 of the Criminal Procedure Code. But we are satisfied that there is no substance in this argument and there is no camouflage or evasion in the present case.”

Court, which is cited by learned counsel for the petitioner himself and which is fully applicable to the present case, I find that provisions of Section 195 Cr.P.C. are not applicable in the present case as in the present case, one of the offence is under Section 333 IPC. As per the record, one of the offence qua which accused were charge-sheeted under Section 333 IPC, is a distinct offence and registration of the FIR cannot be held as camouflage or evasion of provisions of Section 195 Cr.P.C., in view of the facts of the case.

In view of the above discussion, I find that no illegality has been committed by learned trial Court while passing impugned order dated 19.08.2014.

Therefore, finding no merit in the present petition, the same is dismissed.

July 04, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No