

CRM-M-41841 of 2018 (O&M) 1

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

CRM-M-41841 of 2018 (O&M)

Date of Decision :30.09.2019

Narinder Kumar

....Petitioner

Versus

State of Punjab

...Respondents

CORAM : HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present : Mr. J.S.Dadwal, Advocate for the petitioner

Mr. S.P.S.Tinna, Additional Advocate General, Punjab

ANIL KSHETARPAL, J.(ORAL)

Narinder Kumar-petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. Correctness and validity of the order passed by Judicial Magistrate First Class dated 7.11.2017 affirmed in revision by Additional Sessions Judge vide order dated 25.7.2018 has been challenged.

Learned counsel for the petitioner submits that police after investigation had submitted a supplementary report under Section 173 (8) Cr.P.C giving its opinion that no evidence against the petitioner is made out. He further submits that no doubt the Court is not bound to accept the report submitted by the police, however, the Court should atleast record some semblance of reason to ignore the report. While drawing attention of the Court to the order passed by the learned Judicial Magistrate, learned counsel

for the petitioner submits that from the reading of the order, operative part

whereof is reproduced as under, it is apparent that learned Judicial Magistrate did not give any semblance of reason to ignore the report submitted by the police under Section 173 (8) Cr.P.C. The relevant part of the order passed by the Judicial Magistrate is extracted herebelow:-

“At the stage of framing of charge or consideration on application for discharge, the material produced by prosecution alone is relevant and not the materials produced by the accused. Further, the court is not bound with the cancellation report submitted by the police u/s 173 (8) qua the accused Narinder Kumar. The case of the prosecution is mainly based upon the documentary evidence. No doubt, at the time of framing the charges the court has undoubted power to sift and weigh the evidence for the limited purpose of finding out a prima facie charge against the accused has been made out. The test to determine prima facie case would depend upon facts of each case. If on the basis of material on record, court form an opinion that accused might have committed offence, it can frame charge. At the time of framing of charge probative value of the material on record cannot be gone into. The law does not permit a mini trial at this stage. At the stage of framing of charge the court should be satisfied that the accusation made against the person is not frivolous and that there is some material for proceedings against him. While considering the question of framing a charge the court has the

undoubted power to sift and weight the materials for the purpose of finding out whether prima facie case against the accused is made out or not. At this stage, even in a very strong suspicion founded upon materials on record which leads the court to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged is enough. It is also not obligatory on the part of court to give reasons for framing of charges. Judge should not make roving enquiry into pros & cons of the matter and weigh the evidence as if he was conducting trial. In view of the documents produced on judicial file by the prosecution, prima facie case is made out. As such, applications in hand stands hereby dismissed.”

The order passed by learned Revisional Court is also on the same lines.

No doubt the Judicial Magistrate is not bound to accept the report submitted by the police/investigating agency, however, once the Court is proceeding to frame charge, it is required to consider the entire material on file and thereafter form an opinion. It is also correct that at the stage of framing of charge, the Court is not required to deeply examine the evidence collected by the prosecuting agency. However, before framing charge, it is expected from the Court to atleast consider the material and record a prima facie reason for forming a particular opinion. In the present case, such forming of opinion is absent. Hence, the order on the challenge is

record including supplementary report and thereafter form an opinion by giving some semblance of reason. Orders dated 7.11.2017 and 25.7.2018 are set aside.

Disposed of.

(ANIL KSHETARPAL)
JUDGE

30.09.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No