

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-43184-2017 (O&M)
Date of Decision : 25.3.2019

Amrik Singh

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

AJAY TEWARI, J. (Oral)

This petition has been filed against the order dated 23.10.2017 passed by the Trial Court (Annexure P-13) framing charge against the petitioner. The order is as follows :-

Heard on charge. From the perusal of the report U/s 173 Cr.P.C., and the documents attached there to a clear prima-facie case U/S 7.13 (2) P.C. Act is made out. The charge has been accordingly framed against the accused which has been explained to accused in simple Punjabi language. The accused not plead guilty and claim trial. The prosecution witness be summoned for 20.11.2017.

The precise contention of the learned counsel is that in the final report under Section 173(8) Cr.P.C the prosecution had clearly and unequivocally recommended the discharge of the petitioner after citing various grounds and various pieces of evidence. Thereafter, the Court had summoned the complainant who had also suffered a statement that he was

satisfied with the probe though the report under Section 173 (8) was exculpatory, yet while passing the impugned order the Court has not at all adverted to the final report.

Learned DAG is not in a position to deny the factual aspect that the final report under Section 173 (8) Cr.P.C was exculpatory and not inculpatory and the complainant had also expressed his satisfaction.

In my opinion, order of the Trial Court is too cryptic. No doubt that while framing of charge a detailed order need not be passed and rather where the prosecution files an inculpatory report, the order of the nature which has been quoted above could legitimately be passed. But where, as in the present case, the prosecution has abandoned the case and has rather recommended the discharge of the accused (which was supported by the complainant), the Trial Court was not justified in passing the above order which is not to say that the Court cannot take a different view but in the facts and circumstances of the present case, it was incumbent upon the Court to have given its reasons to indicate why it differed with the final recommendation of the prosecution. In **State Tr. Insp. of Police vs. A. Arun Kumar and another** reported as **2015 (2) SCC 417** the Supreme Court held as follows :-

*8. The law on the point is succinctly stated by this Court **Sajjan Kumar vs. CBI, 2005 (3) R.C.R. (Criminal) 707 : (2010) 9 SCC 3687** wherein after referring to **Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4** and **Dilawar Balu Kurane vs. State of Maharashtra, 2002 (1) R.C.R. (Criminal) 451 : (2002) 2 SCC 135** this Court observed in para 19 thus:*

"It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that

the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

This Court the went on to cull out principles as regards scope of [Sections 227](#) and [228](#) of the Code, which in our view broadly apply to [Sections 238](#) and [239](#) of the Code as well. It was observed thus in para 21:

"Exercise of jurisdiction under [Sections 227](#) & [228](#) of Cr.P.C.

21. On consideration of the authorities about the scope of [Section 227](#) and [228](#) of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under [Section 227](#) of the Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) *If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of [Sections 227](#) and [228](#), the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

(vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

In view of this statement of law, the impugned order dated 23.10.2017 is set aside and the matter is remitted back to the Trial Court for fresh decision as per law. The petition stands allowed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

25.3.2019
anuradha

(AJAY TEWARI)
JUDGE

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