

129.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4140-2020

Date of decision: 30.01.2020.

HARPREET KAUR

... Petitioner

versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Pankaj Bali, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 10.01.2020 (Annexure P-3) passed by learned Additional Sessions Judge-cum-Special Court for the cases of Heinous Crime against Women, Karnal passed in case FIR No.46 dated 12.02.2019 under Sections 120-B, 323, 328, 498-A, 506 of IPC, Police Station Nissing, District Karnal whereby respondents No.2 to 4 have been discharged under Sections 328 and 120-B of IPC.

Learned counsel for the petitioner-complainant has argued that at the time of framing of charges, the Court cannot go into the merits of the case and respondents No.2 to 4 could be discharged only during trial after appreciating the evidence on record. He has relied upon ***Sheoraj Singh Ahlawat and others Versus State of Uttar Pradesh and another-2013(11) SCC 476***, to contend that the accused should not be discharged at the stage of framing charges when allegations are specific.

Having heard learned counsel for the petitioner, this Court finds that the argument of counsel for the petitioner is contrary to the judgment passed by the Hon'ble Apex Court in the case of ***P. Vijayan Versus State of Kerala and another-2010(2) SCC 398***, wherein it has been held that the accused can be discharged at the threshold if upon consideration of the records and documents, it is found that there is not sufficient ground for proceeding against the accused. The relevant para reads as under:-

“21. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.”

It was further held that 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 the case of ***Soma Chakravarty Versus State through CBI-2007(5) SCC 403***, the Hon'ble Supreme Court has held that 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. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion, but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge.

In the case of *State Transport Inspector of Police Versus A. Arun Kumar and another-2015(2) SCC 417*, the Hon'ble Apex Court has relied upon the judgment of *Sajjan Kumar Versus CBI-2005(3) R.C.R. (Criminal) 707* and discussed the principles as regards scope of Sections 227 and 228 of the Code. The relevant para is reproduced as under:-

“8. The law on the point is succinctly stated by this Court in *Sajjan Kumar v. CBI, 2005 (3) R.C.R. (Criminal) 707: (2010) 9 SCC 368* wherein after referring to *Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4* and *Dilawar Balu Kurane v. 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 then 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 above, this Court does not find any reason to interfere in the case and accordingly, the present petition is hereby dismissed.

(HARI PAL VERMA)
JUDGE

30.01.2020
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No