

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

**247**

**CRR No.1772 of 2019 (O&M)**

**Date of decision : 15.01.2020**

Ramkuwar and others

....Petitioners

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Surinder Garg, Advocate and  
Mr. Surinder Gaur, Advocate  
for the petitioners.

Mr. Arjun Singh Yadav, Asst.A.G., Haryana  
for respondent-State.

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**ARUN KUMAR TYAGI,J. (ORAL)**

The petitioners have filed the present petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C') for setting aside the impugned order dated 08.05.2019 passed and charges dated 08.05.2019 framed by learned Additional Sessions Judge, Rohtak in criminal case No. SC 84 of 2019 (Registration No. 133 of 2019) titled as State versus Ramkuwar and others, FIR No. 669 dated 04.10.2018 registered under Sections 148, 323, 506, 307 read with Section 149 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Meham, District Rohtak.

2. Briefly stated, the facts giving rise to filing of the present petition are that Surinder Kumar submitted written complaint to S.H.O., Police Station Meham, District Rohtak alleging therein that he has constructed building in his fields and is running a tuition center in the name of Talwindra Academy there. They have land dispute with their paternal elder uncle Ramkuwar. On 03.10.2018 at about 11.30 AM, when he, his wife Urmila, his father and mother were present there, his

elder paternal Uncle Ramkuwar and his sons Bijender and Jaipal, Monu s/o Jaipal and Sushma w/o Bijender and their common relatives Meda, Sube Singh and Gogal armed with *bindas*, *Jailly* and *lathies* started removing their iron main gate adjoining the road. When his father Chandi Ram restrained them from doing so, then all of them started abusing him. In the meantime, 3-4 other boys also came there having *bindas* in their hands. Monu, Ramkuwar, Bijender, Jaipal and another boy started beating his father Chandi Ram due to which his father suffered many injuries on his head. When he tried to save his father, Bijender, Monu, Jaipal and other boys and Gogal attacked him due to which he suffered many injuries on his head and other parts of the body. When his wife Urmila and mother Santro tried to save them, then Bijender caused injury to his mother Santro and Sushma w/o Bijender, Bijender, Monu, Jaipal and two other boys caused injuries to his wife Urmila. On intervention by the passers by the assailants ran away from the spot with their respective weapons while giving threats to eliminate them. Their co-villagers got them admitted for treatment at G.H., Meham where attending doctor referred him, his father and his wife to P.G.I.M.S., Rohtak. In view of the complaint the above said FIR was registered. The police investigated the case and on completion of investigation charge-sheeted the accused to face trial under Sections 148, 307, 323 and 506 read with Section 149 of the IPC.

3. After supplying copies of the report under Section 173(2) of the Cr.P.C and documents sent therewith case was committed to the Court of Session and thereupon assigned to learned Additional Sessions Judge, Rohtak. On perusal of the report under Section 173(2) of the

Cr.P.C and documents sent therewith and after hearing the prosecution and the accused, learned Additional Sessions Judge, Rohtak opined that a prima facie case under Sections 148, 307, 323, 149 and 506 of the IPC was made out against the accused and accordingly framed charges against them. Feeling aggrieved the accused have filed the present revision petition.

4. I have heard learned Counsel for the petitioners and learned State Counsel and gone through the relevant record.

5. Mr. Surinder Garg, and Mr. Surinder Gaur, Learned Counsel for the petitioners have argued that the order passed by the learned Additional Sessions Judge is non-speaking as no reasons have been given as to how prima facie case was made out against the petitioners and merits and de-merits of the case have not been discussed. Injuries suffered by Surinder and Urmila were declared to be simple in nature. Single injury on the head of Chandi Ram has been declared to be dangerous to life. Doctor Monika, who had opined the injury to be dangerous to life, had not examined injured Chandi Ram. The weapon of offence had not been shown to her. Dr. Monika merely recorded that the injury was dangerous to life without recording further opinion that injury would have been sufficient in the ordinary course of nature to cause death. The offence under Section 307 of the IPC is not made out. Learned Additional Sessions Judge, Rohtak has acted with material illegality and irregularity in exercise of her jurisdiction. Therefore the impugned order and charges framed may be set aside. In support of his arguments learned Counsel for the petitioner has placed reliance on the judgment of a Co-ordinate Bench of this Court in **CRA**

*No. 823-SB of 2000 titled as Bawa Singh and others versus State of Punjab 2013(3) R.C.R.(Criminal) 1027* in which the Co-ordinate Bench of this Court while referring to observations in *Atma Singh v. The State of Punjab, 1982(2) CLR 496; Pritam Singh and another v. State of Punjab, 2010(3) RCR (Criminal) 395; Tej Ram v. The State of Punjab, 1978(6) CLR 76 and State of Punjab v. Tara Singh, 1987(1) Recent Criminal Reports (Criminal) 184* held that injury described by the doctor as 'dangerous to life' alone would not be sufficient and such type of injury/opinion is not the type of the injury as would attract the provisions of Section 307 I.P.C., which envisages an injury sufficient in the ordinary course of nature to cause death.

6. On the other hand, Mr. Arjun Singh Yadav, learned State Counsel has argued that the report under Section 173(2) of the Cr.P.C and documents sent therewith make out prime facie case as to commission of the offences in question and the impugned order and charges framed do not suffer from any illegality. Therefore, the petition may be dismissed.

7. For appreciating the submissions made reference to the relevant statutory provisions is essential. Section 227 of the Cr.P.C. Provides for discharge while Section 228 of the Cr.P.C. Provides for framing of charge in trial before Court of Session and the same read as under:-

*“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

**228. Framing of charge.**—(1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—*

- (a) *is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
- (b) *is exclusively triable by the Court, he shall frame in writing a charge against the accused.*

(2) *Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”*

8. In ***Om Wati v. State (Delhi Administration), (SC) 2001***

**(2) R.C.R. (Criminal) 255** Hon'ble Supreme Court observed as under:-

*“7. Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons. This Court in **Kanti Bhadra Shah and another v. State of West Bengal, 2000(1) RCR(Crl.) 407 (SC) : 2000(1) SCC 722** held that there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge. Taking note of the burden of the pending cases on the courts, it was held :*

*Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to*

*discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that even in a trial before a court of session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.*

*If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at this stage, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

*8. At the stage of passing the order in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the Court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The Court is not required to enter into meticulous*

*consideration of evidence and material placed before it at this stage. This court in **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Ghordia and another, 1989(1) SCC 715** cautioned the High Courts to be loathe in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face. The opinion on many matters can differ depending on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed.*

9. Dealing with the scope of Sections 227 and 288 of the Code and the limitations imposed upon the Court at the initial stage of framing the charge, this Court in **State of Bihar v. Ramesh Singh, AIR 1977 Supreme Court 2018** held :

*Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in this conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is 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 not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty of*

*unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."*

9. In ***State by the Inspector of Police, Chennai Vs. S. Selvi and another*** 2018 (1) R.C.R. (Criminal) 625 Hon'ble Supreme Court observed as under :-

“7. It is well settled by this Court in catena of judgments including the cases of ***Union of India v. Prafulla Samal***, (1979) 3 SCC 4; ***Dilawar Babu v. State of Maharashtra*** 2002(1) R.C.R.(Criminal) 451 : (2002) 2 SCC 135; ***Sajjan Kumar v. CBI*** 2010(4) R.C.R.(Criminal) 382 : 2010(5) Recent Apex Judgments (R.A.J.) 350 : (2010) 9 SCC 368; ***State v. A.Arun Kumar*** 2015(1) R.C.R.(Criminal) 295 : 2015(1) Recent Apex Judgments (R.A.J.) 38 : (2015) 2 SCC 417; ***Sonu Gupta v. Deepak Gupta*** 2015(2) R.C.R.(Criminal) 32 : 2015(1) Recent Apex Judgments (R.A.J.) 607 : (2015) 3 SCC 424; ***State of Orissa v. Debendra Nath Padhi*** 2003(2) R.C.R.(Criminal) 116 : (2003) 2 SCC 711; ***Niranjana Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijayya*** 1991(1) R.C.R. (Criminal) 89 : (1990) 4 SCC 76 and ***Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja*** (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 Cr. P.C., 1973 pertaining to warrant cases) 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; where the material placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a Post Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial. In the case of *Sajjan Kumar v. CBI* 2010(4) R.C.R.(Criminal) 382 : 2010(5) Recent Apex Judgments (R.A.J.) 350 : (2010) 9 SCC 368, Hon'ble Supreme Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Cr.P.C. laid down the following principles:-

- i) The Judge while considering the question of framing the charges under section 227 of the Cr.P.C., 1973 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.”

10. In the present case, the petitioners-accused are alleged to have formed unlawful assembly and to have caused injuries to complainant Surinder Kumar, his father Chandi Ram, his mother Santro and his wife Urmila and to have criminally intimidated them. Injury on the person of injured Chandi Ram has been declared to be dangerous to life. Learned Additional Sessions Judge, Rohtak after going through the report under Section 173(2) of the Cr.P.C and documents sent therewith and hearing the prosecution and the accused opined that prima facie case under Sections 148, 307, 323 149 and 506 of the IPC is made out against the accused. The question as to whether Dr. Monika, who had not examined Chandi Ram, could record medical opinion as to nature of injury and as to whether injury declared to be dangerous to life was sufficient to cause death in the ordinary course of nature and whether the same could be caused with the kind of weapon alleged to have been used are questions which have to be determined on the basis of

evidence to be produced during trial and could not be gone into and determined at the stage of framing of the charges. Suffices, it to observe that on evaluating the material placed before the court with the presumption that material brought on record by the prosecution is true and with a view to find out if the facts emerging therefrom taken at the face value disclose the existence of all the ingredients constituting the alleged offences, there is strong suspicion and prima facie case as to commission of offences punishable under Sections 148, 307, 323 and 506 read with Section 149 of the IPC by the petitioners-accused is made out. The observations in ***Bawa Singh and others Vs. State of Punjab, Om Wati Vs. State (Delhi Administration)***, (relied upon by learned Counsel for the petitioners) were made on appeal against judgment of conviction and order of sentence on the basis of evidence recorded during trial and not at the stage of framing of charges. Therefore, the observations therein would not be applicable and could not be taken into consideration at the time of framing charges against the petitioners-accused and for the purpose of judging validity of the impugned order framing charges by conclusively judging/determining the merits or de-merits of the medical opinion which is yet to be translated into evidence and tested on the anvil of cross examination but is unequivocally sufficient to give rise to strong suspicion. Learned Additional Sessions Judge, Rohtak was not required to give reasons and discuss merits and demerits of the case and can not be said to have acted with material illegality or irregularity in exercise of her jurisdiction.

11. It follows from the above discussion that the impugned

order passed and charges framed by learned Additional Sessions Judge, Rohtak do not suffer from any illegality and are not liable to set aside.

12. Accordingly, the petition is dismissed with no order as to costs.

15.01.2020  
Rajeev (rvs)

(ARUN KUMAR TYAGI)  
JUDGE

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