

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-28200 of 2021 (O&M)

Date of decision : 22.7.2021

...

Tofik Ahmed

.....Petitioner

vs.

State of Haryana and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sarfaraj Anjum Mor, Advocate
for the petitioner.

...

H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition under Section 482 Cr.PC., has been filed by petitioner Tofik Ahmed, an accused in FIR No. 283 dated 11.12.2019, for offences under Sections 148, 149, 323, 325, 341, 379-B, 201, 506 IPC and Section 25/54 of Arms Act, 1959, Registered at Police Station Nagina, District Nuh (Mewat). He is seeking quashing of the FIR and ancillary proceedings.

On being asked, learned counsel for the petitioner has stated that the petitioner has since joined the investigation and on completion thereof, challan against him has been filed in the Court of

Additional Sessions Judge, Nuh (Mewat) and the next date of hearing fixed in the trial Court is 23.9.2021, for the purpose of consideration on the point of framing of charge.

The main grouse of the petitioner is that the petitioner was not present at the spot at the relevant time, as is evident from the record regarding his attendance, copy of which being Annexure P-3 and he has been wrongly roped in by the complainant, just to harm him by way of getting his services with Haryana Roadways, terminated, for the reason of his involvement in a criminal case.

Section 227 of the Code of Criminal Procedure provides that 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. Whereas Section 228 deals with framing of charge dilating that if after such consideration and hearing, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) XXX XXX XXX

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

Thus, a full fledged mechanism is there in the Code of Criminal Procedure, to deal with such eventualities and the accused must take recourse to the said mechanism, instead of coming to this Court. He

by way of evoking the jurisdiction under Section 482 Cr.P.C., which deals with saving of inherent powers of High Court to make such orders as may be necessary to give effect to any order under the Code of Criminal Procedure, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Simply because by invoking such jurisdiction of the High Court, a litigant may hope to get prompt justice, does not mean that the mechanism provided under the Code is to be given a go bye. In that way Section 482 Cr.P.C., is not a panacea for all the ills.

Under the circumstances, this petition cannot survive and is dismissed accordingly.

The petitioner may raise all the pleas before the trial Court at the time of framing of charge and the trial Court is directed to consider such pleas and deal with same by way of a speaking order. It is observed here that if the trial court does not agree with the contentions raised by the learned counsel for the petitioner – accused, then he may challenge the said order by way of filing a revision and thereafter may avail of any other remedy open to him under the law.

22.7.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No