

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

CRM-M-2521-2022

Judgment reserved on: 10.03.2022

Judgment pronounced on: 28.04.2022

PARAMJIT KAUR

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. R.S. Bajaj, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

1. The instant petition raises a challenge to the order dated 10.12.2021 (Annexure P-7) passed by the Additional Sessions Judge, Hoshiarpur whereby the revision petition filed by the petitioner against the order dated 03.12.2019 (Annexure P-6) passed by the Sub Divisional Judicial Magistrate, Dasuya dismissing the application under Section 323 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) for committing the case to Court of Sessions had been dismissed in case FIR No. 155 dated 27.07.2016 registered under Sections 328/380 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) Police Station Tanda, District Hoshiarpur.

2. The brief facts of the case as are crucial for appreciating the controversy involved in the present matter are narrated as under:-

“Pritpal Singh, son of the petitioner was married to Sandip Kaur-respondent No.2 in the year 2014. However, no child is born from the said wedlock. The son of the petitioner married to respondent No.2 is working in Italy and is residing there. That on 16.07.2016, the petitioner and respondent No.2 were present in the house. At about 10:00 A.M., the respondent No.2 gave milk to the petitioner in which it is claimed that some intoxicant tablets had been mixed. After consuming the said milk, the petitioner claims to have become unconscious, whereafter, the respondent No.2 fled from the house. The husband of the petitioner is serving as SP in CRPF and was posted in Calcutta. The Father-in-law of the petitioner came to know about the condition of the petitioner in the morning and accordingly, he arranged for a vehicle to secure treatment of petitioner on 17.07.2016 where after the petitioner was administered first aid. She was referred to Capitol Hospital, Jalandhar. The Doctor attending upon the petitioner diagnosed it as a case of over-sedation. The petitioner claims to have remained admitted in the said Hospital till 19.07.2016. She alleged that the respondent No.2 had fled away from the home and had stolen gold ornaments weighing 15 tolas and had also taken away cash to the tune of Rs. 85,000/-. Resultantly, FIR No.155 dated 27.07.2016 was registered against respondent No.2 at Police Station Tanda, District Hoshiarpur.”

3. That during the investigation of the FIR, the Investigating Agency collected sample of gastric lavage of the petitioner and forwarded the same to the Chemical Examiner after a period of about 07 months on 20.07.2017 and the same was retained by the Laboratory and report in this regard was given only on 02.11.2017 stating therein that no drug or intoxicant had been detected in the sample. Copy of the report of the Chemical Examiner was appended with the petition as Annexure P-3. The police filed a final report under Section 173 Cr.P.C. on 21.12.2017 under

Section 380 IPC only and a charge was framed against respondent No.2 for the said offence. The petitioner preferred not to raise any challenge to the said order framing charge and the case was fixed for prosecution evidence.

4. The petitioner later on moved an application before the Trial Court through the State under Section 323 Cr.P.C. for committing the case to the Court of Sessions so that charge under Section 328 IPC may also be framed. The said application preferred by the petitioner was dismissed by the trial Court vide order dated 03.12.2019 (Annexure P-6).

5. Aggrieved of the said order, the petitioner preferred revision petition before the Court of learned Sessions Judge, Hoshiarpur, however, even the said revision petition was dismissed by the Additional Sessions Judge, Hoshiarpur vide judgment dated 10.12.2021 (Annexure P-7). Hence, the present petition.

6. Learned counsel for the petitioner has argued that the judgment passed by the trial Court below suffers from non-consideration of the statutory provision and is based upon mis-appreciation on the evidence. It is argued that the Courts below have relied only on the FSL report but have not framed a charge under Section 328 IPC and have completely ignored the initial diagnosis and treatment of the petitioner in Capitol Hospital, Jalandhar where she was diagnosed and treated as a case of over-sedation. It is also submitted by him that the Doctor who had attended to the petitioner had also appeared as a witness to corroborate the treatment extended to the petitioner.

7. It is also argued by the learned counsel that the samples in the case were sent after a delay of about 07 months for chemical examination and that even the Laboratory retained the sample for a further period of 3 ½

months. No reasons have been assigned for the said delay and the same has occasioned mis-carriage of justice.

8. Learned counsel has also placed reliance on the judgment in the matter of *Lalit versus State of Haryana* reported as *2016 (5) RCR (Criminal) 23* to supplement that FSL report is only a corroborative evidence and cannot be considered as a conclusive proof.

9. I have heard learned counsel for the parties and gone through the documents appended along with the petition.

10. It is evident from the perusal of the same that the case of the petitioner is based upon an allegation that the respondent No.2 had administered an intoxicant by mixing the same in Milk. The gastric lavage samples were drawn and sent to the chemical lab for examination. It is undisputed that no intoxicant substance was detected in the gastric lavage.

11. Learned counsel appearing on behalf of the petitioner has laid much emphasis on the delay in sending of the sample for chemical analysis to the Laboratory and thus contended that the result of analysis should not be considered.

12. The said argument does not inspire much confidence in as much as the counsel for the petitioner failed to point out any material or judgment to hold that the compound in the sample drawn cannot be detected after any specific time period. In the absence of any material to show that the delay in sending the lavage for analysis would have caused material change in the chemical composition of the sample leading to disintegration of material and rendering it unfit for detection of the compound, it cannot be presumed that merely on account of a delay in sending of the sample or analysis thereof by

the Laboratory, the report so furnished should be held to be inconclusive and unreliable. There is also nothing on record to suggest or to even prime facie show that the sample so sent for chemical analysis in any manner tempered. In the absence of any tempering of the sample and evidence to establish that the compound in the lavage sample has a limited life span, mere delay in sending a sample for chemical analysis would not demolish the report. Besides, there is no challenge to the finding recorded by the FSL in its Report by any cogent admissible and authoritative material. Consequently, it cannot be declared by the Court that the analysis of a sample should be disregarded by a Court in a case where the sample is sent after delay to the Laboratory.

13. That the same now leads to the argument of the petitioner to the effect that the treating Doctor stepped into the witness box and claimed to have treated the petitioner for over-sedation. The argument of the counsel, is that once the Doctor prescribing treatment has specifically deposed that he had administered treatment for sedation, the said statement *ipso facto* is sufficient to make out a charge under Section 328 IPC and to claim committal of the case to the Court of Sessions under Section 323 Cr.P.C.

14. It would be relevant to observe that the petitioner has chosen not to raise a challenge to the order whereby the charge was framed and has raised a mere challenge to the order passed on an application under Section 323 Cr.P.C. for committal. The aforesaid order cannot be held as an intermediate order or a final order, determining the rights of any party finally. Resultantly, the said order would be in the nature of an interlocutory order and would not be revisable. The substantive order is the order framing charge and not the order on an application for committing the case to the

Court of Sessions. Commitment of a case by the Magistrate to the Court of Sessions comes into operation only when the Magistrate finds that the case should be committed. Section 323 Cr.P.C. is a power conferred upon the Magistrate and not a right vested in a party to the *Lis*. It does not lie for any party to claim that a Magistrate must be satisfied in a defined manner. Such satisfaction of a Magistrate is his own satisfaction and the same cannot be forced by any party to the *Lis*. The grievance, if any, of a party can only be against an order framing charge where one has a right to claim that a person ought to be tried for the offences that are made out. For reasons best known to him, the petitioner has chosen not to raise a challenge to the order framing charge.

15. However, now adverting to the treatment administered by the Doctor and whether the same should be held sufficient to direct committal of the case by holding that case under Section 328 IPC is made out. The submission of the petitioner cannot be accepted in the facts of the present case especially when there is per se admissible evidence available on a Court file that established to the contrary. The treatment given by the Doctor is only a corroborate piece of evidence and not sufficient to opine about existence of a prima facie case by completely disregarding the overwhelming documentary evidence to the contrary. The test of prima facie evidence cannot be given an interpretation to completely ignore the admissible and conclusive evidence to the contrary and to still subject the accused to trial for assessing a prime facie evidence, the entire evidence needs to be seen and kept in mind. Selective evidence ignoring the conclusive evidence cannot can not be applied by the Court of law to frame a charge by applying the test of a prime facie case.

16. The treatment extended which is not supported by clinical report, is not determinant of administering sedative/poison.

17. The administration of treatment for an alleged diagnosis of sedation is not substantiated by any test results/lab reports. The prosecution of the respondent No.2 is being sought for an offence that must be *prima facie* shown to exist. Commission of the said offence is not to be inferred on the basis of a treatment extended or claimed to be extended to a patient disregarding clinical result/lab report determining the fact to the contrary. There is no material to *prima facie* show that the diagnosis of the attending doctor was correct. Administration of medicine *per se* would not determine that the patient suffered from the said problem. Even though, FSL may not be a conclusive material and is only a corroborative piece of evidence, however, learned counsel for the petitioner has failed to refer to any material on the strength whereof it could be observed that the Lab report of the FSL is deficient or is liable to be contradicted on the basis of other documentary evidence. A mere self-serving testimony about the treatment given would not be the evidence to infer the charge to exist. Subjecting an accused to a charge that is not made out, is itself inflicting an agony. Framing of a charge can not be justified, ignoring the *per se* admissible evidence on the basis of oral testimony by a Doctor about his opinion. An accused should not be subjected to undergo trial by framing a graver charge on a belief or understanding that he is not prejudiced or that it will have no impact and that he will eventually be acquitted in trial. Graver the charge, higher is the trauma and agony to be faced by the accused while undergoing a trial.

18. The need of a *prima facie* case for framing of charge does not empower the Court to completely ignore and disregard the conclusive and

per se admissible evidence in its entirety. Such an approach, in my view, would itself be a travesty of justice.

19. In so far as the judgment referred to by the counsel for the petitioner is concerned, the same would not be applicable to the facts of the instant case. The said judgment had been passed while examining the scope of 216 Cr.P.C. The said Section deals with the power of the Court to alter a charge. The said Sections are extracted hereinafter below :-

Section 216 in The Code Of Criminal Procedure, 1973

216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

20. To the contrary, the case in hand does not deal with Section 216 Cr.P.C. & rather deal with Section 323 Cr.P.C. and the same reads as under:

Section 323 in The Code Of Criminal Procedure, 1973

323. Procedure when, after Commencement of inquiry or trial, Magistrate finds case should be committed. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

21. A perusal of the same shows that alteration and addition of the charge can be carried out by the Court at any stage during the pendency of the proceedings. The power of framing charge is separate from the procedure required to be followed in the event of framing of a charge or upon finding prima facie charge being made out. While the charge in a case initiated on the basis of a Police report can be framed on the basis of the prima facie evidence, the committal is a proceeding which has to be initiated when the Magistrate feels that the evidence discloses a case to be tried by the Court of Sessions. Thus, existence of evidence making out a charge for a Sessions trial must exist before the case is to be committed. Charge in the case in hand was framed under Section 380 IPC on 03.01.2018. The same was never challenged and eventually the application under Section 323 Cr.P.C. was moved on 09.08.2019 i.e. after a delay of more than a year and a half. Invariably, the application in question is an attempt by the petitioner to do indirectly what has not been done directly. In the said judgment of ***“Lalit versus State of Haryana” (supra)***, a charge under Section 328 IPC had already been framed by the Trial Court and an application had been moved

after the receipt of the FSL report showing absence of an intoxicant material/sedative, to drop the charge. It was in the said facts that the Court, while examining the powers under Section 216 Cr.P.C. held that the charge can be altered at any stage and that the report of FSL is only a corroborative piece of evidence and denial of deletion of the charge by the Court of Sessions cannot be held to be bad.

22. It would also be necessary to make a reference to the following extract of the judgment of the matter of Allahabad High Court in the matter of **Mukhtar Ali versus State of U.P.** passed in **Criminal Revision No. 119 of 1993** decided on 21.07.1998, the relevant paras is extracted as under:

*“7. The next authority relied upon by the learned counsel for the revisionist was **Kamal Krishna versus State, 1977 Cri Lj 1492 (Cal.)**. In this authority also it was held that the order of commitment was an interlocutory order and revision against the same was barred.*

*8. Next, reliance has been placed by the learned counsel for the revisionist on the authority, **Ambika Prasad versus State of U.P., 1992 All Cri C 200**. In this authority it was said that no revision lay against the order making committal of a case to the Court of Session.”*

23. Further, the Calcutta High Court has held in the matter of **“Bimal Kumar Chandra and others versus The State and others”** reported as **1976 SCC OnLine Cal 273** as under:

“The order of commitment by the learned Magistrate is an interlocutory order in pending proceedings. (Please refer to the decision of this Court in B.N. Agarwala v. State, reported in (1976) 80 Cal WN 141) and of the Supreme Court in Jamuna Singh v. Bhadai Shah, AIR 1964 SC 1541. In view of the provisions of Section 397(2), Cr. P.C. and the order of

commitment being an interlocutory one revisional applications are not maintainable, We are not persuaded to say that the order of commitment has resulted in any gross miscarriage of justice or undue harassment amounting to abuse of process of the court calling for the exercise of inherent power of this Court.

24. Hence, the said judgment is distinguishable on the facts as well. Besides, except for the oral testimony, there is no corroborative piece of evidence that supplements the claimed diagnosis of the Doctor. The requirements prescribed for framing/addition of charge are at variance with the requirement for exercise of power under Section 323 Cr.P.C. Hence, ratio of the said judgment which had been passed in a separate context and under different statutory provision cannot safely be presumed as laying the ratio for exercising the powers under Section 323 Cr.P.C. Further, Additional Sessions Judge, Hoshiarpur has considered the submissions advanced by the petitioner and had recorded as under :-

“10. Perusal of the file reveals that report U/S 173 Cr.P.C. was filed by the police against Sandeep Kaur U/s 380 IPC on 3.1.2018 and charge was framed against the accused on the same day. Alongwith the challan, report of chemical examiner was also attached which is Ex.PH, perusal of which reveals that no drug/intoxicant was detected in the contents of Ex.1 i.e. gastric lavage and in view of the said report, charge against the accused U/S 380 IPC was framed. Perusal of 4 file of Id.trial court further reveals that the trial is fixed for prosecution evidence since 29.1.2018 and till now, five witnesses have already been examined. This court has also gone through the statement of PW3 Dr.J.S. Nannuan. The same also do not suggests that poison/intoxicant was given to Paramjit Kaur. Keeping in view the aforesaid observations, the application of the complainant under section 323 Cr.P.C. for

committing the case to the court of Sessions by the ld.APP for State has been rightly dismissed by the ld.trial court.

11. To Sum up, therefore, the impugned order does not suffer from any legal or factual infirmity. Moreover, the scope of interference in the revision by the appellate Court is very limited. The appellate Court can interfere when the order passed by the trial Court is found to be perverse or against law. I do not find any infirmity, illegality or jurisdictional error in the order passed by the learned trial Court.

25. It is, thus, evident that even the factual aspect of the case had been examined by the trial Court and the learned Additional Sessions Judge, Hoshiarpur did not find any merit. I do not find any illegality in the order passed by the Trial Court. The instant petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 28, 2022

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No