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

CRM-M-9039-2022

Date of decision : 04.03.2022

Harmanpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Navjinder Singh Sidhu, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.37 dated 09.04.2021 registered under Section 409 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Badani Kalan, District Moga (Annexure P-2) as well as challan dated 14.06.2021 (Annexure P-13) and charge sheet dated 21.12.2021 (Annexure P-14) and all the consequential proceedings arising therefrom.

Learned counsel for the petitioner has submitted that in the present case, apart from other issues, legal issue which would arise is as to whether the charge could have been framed against the present petitioner

under Section 409 of the IPC when the petitioner is a private businessman. It is further submitted that in the present case, charges have been framed vide order dated 21.12.2021 (Annexure P-14) on the same date when the challan was presented and no opportunity was given to the petitioner to make submissions with respect to the fact that the charges should not be framed against the present petitioner. It is argued that no charges under Sections 34/120-B of the IPC have been framed in the present case and thus, the petitioner could not be proceeded against in the present case for the offence under Section 409 of the IPC. It is also argued that the order framing charges dated 21.12.2021 is cryptic and non-speaking.

Learned counsel for the petitioner has submitted that the petitioner would be satisfied, at this stage, in case, order dated 21.12.2021 (Annexure P-14) is set aside and fresh order is passed after hearing the present petitioner and the other co-accused and after considering the submissions made by the counsel.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition and submitted that as per the statement of one Harwinder Singh @ Kala Kabaria dated 26.04.2021 (Annexure P-12), it is the present petitioner who had allegedly sold the car to the said Harwinder Singh @ Kala Kabaria.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of order dated 21.12.2021 (Annexure P-14) would show that the charges were framed on the same day when the challan was presented and no opportunity was granted to the petitioner to make submissions as to whether the charges should be framed against the petitioner or not. The said order is thus, cryptic and non-speaking.

Keeping in view the abovesaid facts and circumstances, the present petition is partly allowed and the order dated 21.12.2021 (Annexure P-14) is set aside and the trial Court is directed to pass fresh order within a period of two months from the date of receipt of certified copy of the present order. The said order would be passed after hearing the learned counsel for the petitioner and other co-accused and also all the other concerned persons.

04.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**