

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-212-2022 (O&M)
Date of decision: 19.04.2022

Jagtar Singh Johal @ Jaggi

.... Appellant

Versus

National Investigation Agency and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. M.S. Rana, Advocate
for the appellant.

PANKAJ JAIN, J.

By way of present appeal filed under Section 21 of the National Investigation Agency Act, 2008, appellant has laid challenge to the order dated 24.01.2022 passed by Special Court, NIA, Punjab, SAS Nagar (Mohali), whereby application filed by the appellant seeking discharge under Section 227 of the Code of Criminal Procedure (hereinafter referred to as 'Code') has been dismissed.

2. Appellant is facing trial in RC No.24 dated 10.12.2017 for offences punishable under Sections 120-B, 307 IPC, Sections 25 & 27 of Arms Act and Sections 16, 17, 18, 18A, 20, 21 and 23 of Unlawful Activities (Prevention) Act, Police Station NIA, New Delhi.

3. The genesis of the case lies in complaint made by one Amit Arora. In his complaint, he stated that at about 20:30 hours on 03.02.2016, while he was sitting in his car near Jyoti Motors, Basti Jodhewal, G.T. Road, Ludhiana, two unknown persons who came on motorcycle shot at him with intent to kill. He received bullet injury on

the backside of his neck, but was luckily saved. On the basis of said complaint, FIR No.27 of 2016 was registered on 04.02.2016 at Police Station Basti Jodewal, Ludhiana. Exercising the powers conferred under Section 6(5) of the NIA Act, 2008, the investigation was handed over to National Investigating Agency (hereinafter referred as 'investigating agency') vide order No.11011/38/2017/IS.IV dated 08.12.2017. The case was re-registered at Police Station NIA, Delhi as RC/24/2017/NIA/DLI on 10.12.2017.

4. During investigation, it was found that the attempt made to kill Amit Arora, was part of a larger conspiracy involving the incidents of series of targeted killings/attempted killings of persons belonging to specific communities. The object of the conspiracy was to destabilize the law & order situation in Punjab and revive the terrorism in the State. After investigation, the charge sheet has been filed in the Court on 22.02.2019 against eight accused persons (namely Hardeep Singh @ Shera @ Pahalwaan, Ramandeep Singh @ Canadian Bagga, Dharminder Singh @ Guguni, Anil Kumar @ Kala, appellant, Harmeet Singh @ PhD, Gurjinder Singh @ Shastri, Gursharanbir Singh) including the appellant. As per the same, appellant used to write a publication in the name of "Singh Surme" related to riots of 1984 in India. He alongwith a co-accused wrote a book on Khalistan Liberation Force (KLF). In the year 2013-14, the appellant handed over Pounds 3000 to one Harminder Singh @ Mintoo in France. This money was sent by one of the co-accused for Harminder Singh @ Mintoo. This amount was later used in the recruitment & motivating the co-accused Hardeep Singh @ Shera to join the Khalistan Liberation Force, a terrorist gang. Hardeep Singh @ Shera alongwith Ramandeep Singh had carried out the series of targeted

killings/attempted killings during the period of 2016 & 2017 in Ludhiana and Jalandhar Districts of Punjab in furtherance of larger conspiracy of destabilizing the law and order situation of Punjab. The appellant is a close associate of Harmeet Singh @ PhD and Gursharanveer Singh, masterminds of the said conspiracy. He played a vital role in the planning, related to the conspiracy. It further submitted that there is sufficient evidence against the appellant on record collected during the course of investigation which establish his involvement in the conspiracy.

5. Report under Section 173 of the Code was filed before the Special Court. The application under Section 227 of the Code has been filed seeking discharge of the appellant. Two accused namely Jagtar Singh Johal @ Jaggi (appellant) and Dharminder Singh @ Guguni filed separate applications which have been decided by common order, impugned in the present appeal at the hands of the appellant.

6. Counsel for the appellant while assailing the impugned order has raised a two fold argument. His contention is that the material collected by the investigating agency is only in the form of extra judicial confessions which are inadmissible in evidence. He asserts that at the time of framing of charge, Court was required to go into the question as to whether the material placed on record was valid piece of evidence. The Special Court having failed to do so, the impugned order deserves to be quashed. Secondly, counsel for the appellant argues that there was no authority with the investigating agency to re-investigate after challan having already been presented in original FIR No.27/2016 before JMIC, Ludhiana. Thus, material placed before Special Court being result of re-investigation cannot be looked into to charge the appellant.

7. In support of his contention, counsel for the appellant has relied upon ***Sajjan Kumar vs. CBI (2010) 9 SCC 368*** and ***Vinay Tyagi vs. Irshad Ali @ Deepak and others reported as (2013) 5 SCC 762***.

8. We have heard counsel for the appellant and have carefully gone through the record of the present case.

9. Special Court while dismissing the application filed by the appellant held that prima facie there is sufficient evidence on record to establish that appellant has conspired, abated, funded and facilitated the instant incident of the terror act. It has been recorded that prima facie, there is sufficient evidence that the appellant was one of the conspirators to target Shiv Sena Hindu Leader Sh. Amit Arora.

10. Counsel for the appellant has not been able to show from the record that the prima facie opinion formed by the Special Court is not based upon material on record. His contention is that the material on record being in form of disclosure statements deserves to be disbelieved at threshold and the appellant is entitled to be discharged.

11. The law regarding exercise of jurisdiction by the Court at the time of framing of charge and/or at the time of considering the application for discharge is no more *res integra*. Apex Court in **Asim Shariff vs. NIA reported as (2019) 7 SCC 148** held that:-

“xx xx xx

16. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in Union of India Vs. Prafulla Kumar Samal & Ors.1 had an occasion to consider the scope of

Section 227 CrPC and it held in paragraph 7 as under: “7. Section 227 of the Code runs thus:

“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 1 1979(3) SCC 4 shall discharge the accused and record his reasons for so doing.” The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

(Emphasis supplied)

12. Even in the judgment of Sajjan Kumar (supra) relied upon by the counsel for the appellant, Apex Court after considering scope and ambit of Sections 227 and 228 of the Code, held that:

“xx xx xx

16. *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. A Magistrate enquiring into a case under Section 209 of the Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 of Cr.P.C., the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

13. So far as reliance on the law laid down in *Vinay Tyagi vs. Irshad Ali @ Deepak and others* (supra) is concerned, there cannot be any quarrel with the proposition of law laid therein. However, it is not at the stage of framing of charge that the material on record can be thrown out holding that it has been collected in a fresh investigation and not in 'further investigation'.

14. In the case of ***Hardeep Singh vs. State of Punjab*** reported as (2014) 3 SCC 92, Constitution Bench of the Apex Court reiterated the settled proposition of law holding that:-

“xx xx xx

93. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: State of Karnataka v. L. Munishwamy & Ors., AIR 1977 SC 1489; All India Bank Officers' Confederation etc. v. Union of India & Ors., AIR 1989 SC 2045; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715; State of M.P. v. Dr.

Krishna Chandra Saksena, (1996) 11 SCC 439; and State of M.P. v. Mohan Lal Soni, AIR 2000 SC 2583).”

15. Thus, at the time of framing of charge, the law prescribes test of 'prima facie case' which shall connote that at the time of framing of charge, the probative value of the material on record is not to be gone into. On the basis of material, Court is required to record satisfaction that the commission of offence by the accused was possible. 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, disclose the existence of all the ingredients constituting the alleged offence or not. It is not open to Court to analyse, appreciate, evaluate the material on record to arrive at a conclusion which would be subject matter of the trial.

16. In the backdrop of afore explained position of law, we find that there is no reason to interfere with the impugned order. We have refrained from expressing any opinion on merits of the case. Needless to say the appellant shall be entitled to raise all pleas raised herein during the course of the trial. Finding the present appeal devoid of merits, the same is dismissed.

17. Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

19.04.2022

Dinesh

Whether speaking/reasoned :

Yes

Whether Reportable :

No