

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

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**CRM-M-11092-2021
Date of decision: 28.02.2022**

BALBIR SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ORS

...Respondents

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

Present : Mr. R.S. Bains, Sr. Advocate with
Mr. Vishesh Chandhok, Advocate
for the petitioner.

VINOD S. BHARDWAJ. J. (ORAL)

1. The question that arises for consideration in the instant petition is as to the scope of authority to be exercised by the Court at the stage of framing of charge. While the petitioner alleges that the Court has transgressed into the arena of ascertaining the probative value of the evidence, the Court below had recorded that the petitioner has failed to make out any *prima facie* case against the accused persons. The Court had also noticed about the capacity of the petitioner to institute the complaint considering that the allegation was with respect to forgery of a Will by Charanjit Kaur in collusion with Raghbir Singh to deny share to her mother-in-law/Mohinder Kaur in the estate of her deceased husband. The dispute had been resolved between the mother-in-law/Mohinder Kaur as well as the accused daughter-in-law/Charanjit Kaur in the civil proceedings, where the accused gave up her claim on the basis of the alleged Will and agreed to the devolving of the estate by way of succession. Mohinder Kaur, neither instituted the complaint nor authorized the petitioner to file the same on her behalf. She also chose not to step into the witness-box to support the complaint. However, the petitioner contends that ignoring the absence of the original Will on record, charge ought to have been framed against the accused person as the decision of accused Charanjit Kaur to

give up her claim to property on the basis of the Will, gives rise to a suspicion that the Will was forged.

2. The present petition raises challenge to the judgment dated 06.03.2020 passed by Sessions Judge, Fatehgarh Sahib in Revision Petition No.23 as well as the order dated 01.07.2019 passed by Sub Divisional Judicial Magistrate, Khamanon by invoking the power of the High Court under Section 482 CrPC and alleging that the said judgement/order discharging the respondents has been passed in complete disregard to the statute and the precedent judgements.

Arguments of petitioner:

3. Learned Senior counsel for the petitioner has argued that petitioner Balbir Singh is brother of deceased Ranjit Singh, who died on 30th November, 2018. The petitioner along with his three brothers were joint-owners to the extent of 1/4th share in the property each. It is alleged that Ranjit Singh (since deceased), husband of respondent No.2-Charanjit Kaur, had not executed any Will regarding his movable and immovable property. Hence, after the death of Ranjit Singh, his property was to be divided by succession amongst the three right-holders namely Mohinder Kaur (mother of Ranjit Singh), Charanjit Kaur (widow of Ranjit Singh) and Mandeep Kaur (daughter of Ranjit Singh). It is further alleged that respondent No.2-Charanjit Kaur in connivance with respondent No.3-Raghbir Singh fabricated of false Will dated 8th November, 2008 in her favour in a fraudulent manner, with an object to grab the property of the deceased Ranjit Singh. The said Will was submitted to the revenue authorities and consequently the share of deceased Ranjit Singh was transferred in her favour and Mutation No.1987 sanctioned.

4. Learned counsel for the petitioner has argued that the Will dated 8th November, 2008 is a forged document and being a product of fraud is null and void. It was also argued that the attesting witness to the Will executed an affidavit dated

20th February 2019, wherein it has been said that the Will in question was never prepared in his presence. Learned counsel argues that apart from the affidavit of the attesting witness, there is yet another circumstance which shows that the Will in question was forged. In support thereof, he has argued that the sanction of mutation was challenged by the petitioner by means of filing an appeal before the Collector, Fatehgarh Sahib, which was, however, dismissed on 3rd June, 2010. The same was further challenged before the Divisional Commissioner of Patiala Division. The same was accepted and the mutation was set aside. In addition thereto, a Civil Suit No.277 was filed before the Civil Court by Mohinder Kaur and that eventually respondent No.2-Charanjit Kaur, who had appeared in the said civil suit, got recorded her statement on 25th November, 2011 that she does not claim any ownership on the basis of the Will in question in view of settlement. On her statement, the suit was dismissed as withdrawn after taking note of the compromise amongst the parties. Learned Senior counsel points out that criminal complaint had been filed against Charanjit Kaur as well as Raghbir Singh for preparing a forged Will, wherein, vide order dated 1st July, 2019, the accused was discharged and the subsequent revision petition was dismissed by Sessions Judge, Fatehgarh Sahib vide judgement dated 6th March, 2020. The judgements passed by the Courts below are argued as being perverse and unsustainable in view of the circumstances pointed out above and that the forgery of the document stands established by the conduct of Charanjit Kaur herself as well as the affidavit sworn by the attesting witness to the Will.

5. I have heard learned Senior counsel and have gone through the documents appended along with the petition with his able assistance.

6. Before proceeding further in the matter it is essential to notice the scope of authority of the trial Court at the time of framing of charge. Charge is

prescribed under Chapter XVII of the Criminal Procedure Code. Since the controversy in the case pertains to discharge in a case instituted otherwise than on police report, we would restrict the discussion to the element of discharge.

7. Further, Section 227 of Chapter XVIII of the Criminal Procedure Code deals with discharge in case of trial before a Court of Sessions and Section 239 CrPC under Chapter XIX of the Criminal Procedure Code deals with discharge in a warrant case by Magistrate. The same are extracted 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.'*

*'239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and **after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused**, and record his reasons for so doing.'*

8. Section 245 of Chapter XIX of the Criminal Procedure Code also deals with the issue of discharge in cases instituted otherwise than on police report i.e., the facts of the present case. Section 245 CrPC reads thus:-

245. When accused shall be discharged.

*(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, **that no case against the accused has been made out which, if unrebutted, would warrant his conviction**, the Magistrate shall discharge him.*

(2) Nothing in this section shall be deemed to prevent a

Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

9. Further, Volume 3, Chapter I Part D of the Punjab and Haryana High Court Rules and Orders under Rule 18 deals with discharge of an accused in the trial of other warrant cases. The same reads thus:-

18. Discharge of accused:- After taking the evidence and making such examination of the accused as he may think necessary, ***if no case is made out which, if unrebutted would warrant a conviction***, the magistrate should discharge the accused, and record his reasons for doing so.

If, however, at any previous stage of the case the magistrate considers the charge to be groundless, he may record his reasons for that opinion, and discharge the accused.

10. A perusal of the same would show that the language used in the said Section is distinct while Section 227 CrPC comes into force if there is no sufficient ground to proceed; Section 239 CrPC prescribes discharge when the 'Magistrate considers it to be groundless'. On the other hand, Section 245 CrPC and Rule 18 of the Punjab and Haryana High Court Rules and Orders are application in respect of cases other than on police report. The legislature has preferred the use of phrase "no case is made out which, if unrebutted would warrant a conviction". It would be pertinent to point out that for the purposes of issuance of process as per Chapter XVI under Section 204 CrPC, the requirement prescribed is "existence of sufficient grounds to proceed". Hence, while a person may be summoned in a complaint case on sufficient grounds to proceed, the requirement prescribed under Section 245 CrPC is distinct and separate. The mere sufficiency of further proceedings is substituted by the element of sufficiency to take the case to a logical end without considering a possible defence and/or the probative value of the evidence. A bald

and unsubstantiated statement and relying upon conjecture, probability, hypothesis and suspicion cannot be perceived as evidence sufficient for the purposes of framing a charge.

11. The Hon'ble Supreme Court, in the matter of Ajoy Kumar Ghose Vs. State of Jharkhand & Anr, bearing Criminal Appeal No.485 of 2009 decided on 18.03.2009, observed as under:-

*'14. However, in a warrant trial instituted otherwise than on a police report, when the accused appears or is brought before the Magistrate under Section 244(1) Cr.P.C., the Magistrate has to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. In this, the Magistrate may issue summons to the witnesses also under Section 244(2) Cr.P.C. on the application by prosecution. All this evidence is evidence before charge. **It is after all this, evidence is taken, then the Magistrate has to consider under Section 245(1) Cr.P.C., whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him.** On the other hand, if he is satisfied about the prima facie case against the accused, the Magistrate would frame a charge under Section 246(1) Cr.P.C. The complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the charge. Of course, under Section 245(2) Cr.P.C., a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.*

16. Now, there is a clear difference in Sections 245(1) and

245(2) of the Cr.P.C. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) Cr.P.C.

17. The situation under Section 245(2) Cr.P.C. is, however, different. There, under sub-Section (2), the Magistrate has the power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led. However, for discharging an accused under Section 245 (2) Cr.P.C., the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the Court or the evidence is led under Section 244 Cr.P.C. The words appearing in Section 245(2) Cr.P.C. "at any previous stage of the case", clearly bring out this position. It will be better to see what is that "previous stage".

18. The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Cr.P.C. is completed or any stage prior to that. Such stages would be under Section 200 Cr.P.C. to Section 204 Cr.P.C. Under Section 200, after taking cognizance, the Magistrate examines the complainant or such other witnesses, who are present. Such examination of the complainant and his witnesses is not necessary, where the complaint has been made by a public servant in discharge of his official duties or where a Court has made the complaint or further, if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 Cr.P.C. Under Section 201 Cr.P.C., if the Magistrate is not competent to take the cognizance of the case, he would return the complaint for presentation to the proper Court or direct the complainant to a

proper Court. Section 202 Cr.P.C. deals with the postponement of issue of process. Under sub-Section (1), he may direct the investigation to be made by the Police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 202(1)(a) Cr.P.C., the Magistrate cannot give such a direction for such an investigation, where he finds that offence complained of is triable exclusively by the Court of sessions. Under Section 202(1)(b) Cr.P.C., no such direction can be given, where the complaint has been made by the Court. Under Section 203 Cr.P.C., the Magistrate, after recording the statements on oath of the complainant and of the witnesses or the result of the inquiry or investigation ordered under Section 202 Cr.P.C., can dismiss the complaint if he finds that there is no sufficient ground for proceeding. On the other hand, if he comes to the conclusion that there is sufficient ground for proceeding, he can issue the process under Section 204 Cr.P.C. He can issue summons for the attendance of the accused and in a warrant-case, he may issue a warrant, or if he thinks fit, a summons, for securing the attendance of the accused. Sub-Sections (2), (3), (4) and (5) of Section 204 Cr.P.C. are not relevant for our purpose. It is in fact here, that the previous stage referred to under Section 245 Cr.P.C. normally comes to an end, because the next stage is only the appearance of the accused before the Magistrate in a warrant- case under Section 244 Cr.P.C. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Cr.P.C., where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Cr.P.C., and if he comes to the conclusion that no case against the accused has been

made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him. The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Cr.P.C., makes an application for discharge.'

(Emphasis supplied)

12. Having considered the above, it also needs to be seen that the Punjab and Haryana High Court Rules and Orders Volume 3, Chapter D Rule 18 mandates a slightly higher degree of the evidence while considering whether a charge is to be framed or not. The same goes to an extent of requiring that the quality of evidence, if unrebutted, should be sufficient to warrant a conviction. The language used under Rule 18 of the Punjab and Haryana High Court Rules and Orders is at variance with the language used in Section 245 CrPC to an extent that Section 245 CrPC refers to the sufficiency of evidence recorded during Section 244 CrPC. No such distinction however has been incorporated under Rule 18 (*supra*).

13. Hence, it becomes imperative for the Court to harmoniously construct the said provisions as they appear in the Criminal Procedure Code and the Punjab and Haryana High Court Rules and Orders.

14. Further, while interpreting the scope of jurisdiction to be exercised by the Court at the stage of charge/discharge, the Hon'ble Supreme Court in the matter of **Union of India Vs. Prafulla Kumar Samal And Another, 1979 AIR (SC) 366,**

held as under:-

'Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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:

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced 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 evidence 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 evidence as if he was conducting a trial.'

15. Still further, in the matter of **Sajjan Kumar Vs. Central Bureau of Investigation, 2010 (9) SCC 368**, the Hon'ble Supreme Court observed as under:-

'17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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.'

16. The Hon'ble Supreme Court in the matter of **State of Tamilnadu by Ins. Of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan & Others, 2014 (11) SCC 709** held as under:-

'19. xxxxxxxxxxxxxxxxx. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials

on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

17. Further, the Hon'ble Supreme Court in the matter of **Sanjay Kumar Rai Vs. State of Uttar Pradesh & Anr**, Criminal Appeal No.472 of 2021, observed as under:-

16. Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total

effect of evidence and documents produced and the basic infirmities appearing in the case and so on. [Union of India v. Prafulla Kumar Samal, 5 (1979) 3 SCC 4]. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be.

18. A perusal of the same shows that the Court is not expected to act as a post office and the Judge has to sift and weigh the evidence as well as the material placed before it. Hence, even though Court may not get into the probative value of the evidence at the stage of framing of charge/discharge, if there are two views that are possible and only one of them gives rise to a suspicion, the Judge would be empowered to discharge an accused. Law would permit the Court to examine the evidence, without going into the probative value thereof, and to determine whether the same, if un-rebutted, is *prima facie* sufficient to lead to a conviction.

Analysis

19. We may now advert to the impugned order. A perusal of the order dated 1st July, 2019 passed by Sub-Divisional Judicial Magistrate, Khamanon shows that the petitioner had been discharged after recording the following finding:-

'12. The complainant alleges that accused no.1 Charanjit Kaur had fraudulently prepared a forged and fabricated Will dated 8.11.2008, purported to be prepared by his late brother Ranjit Singh, bequeathing his entire property in favour of accused Charanjit Kaur. According to him, his late brother Ranjit Singh had died intestate and thus, his property was to devolve upon the natural heirs i.e. his mother Mohinder Kaur, his wife Charanjit Kaur and his daughter Mandeep Kaur. He further stated that this Will was prepared by accused Charanjit Kaur in connivance with accused Raghbir Singh and accused Prem Kumar. The mutation sanctioned in favour of Charanjit Kaur was challenged up till the court of Divisional Commissioner, Patiala and ultimately, it was held that mutation sanctioned on

the basis of Will dated 8.11.2008 was liable to be set aside and the share of Ranjit Singh to devolve on his legal heirs on the basis of natural succession. Further, the civil suit filed by late Mohinder Kaur challenging the Will dated 8.11.2008 was compromised in the court, wherein, the accused Charanjit Kaur had agreed not to lay any claim on the basis of said Will dated 8.11.2008. The complainant further alleges that the electricity connection which was applied in the name of Ranjit Singh by him was fraudulently got transferred by accused no.1 Charanjit Kaur in the name of Jarnail Singh, through misrepresentation by filing an affidavit before Executive Magistrate, Khamanon, District Fatehgarh Sahib on 17.11.2009. It is further stated that the above said electricity connection is running in the Khasra no. 90/37, Khasra no. 15/2 in the name of Jarnail Singh.

13. As is seen from the evidence of the complainant, discussed above, the original alleged forged Will dated 8.11.2008 has not been produced on record. The complainant Balbir Singh during his cross examination has stated that he has not seen the original Will dated 8.11.2008 and he has only produced the photocopy of the same on record. In the absence of production of the original Will on record, it is not possible to ascertain as and in what manner, it was fraudulently prepared by the accused persons in connivance with each other. The complainant has relied upon DDR Ex.CW9/A, referring to the loss of the original Will dated 8.11.2008 by accused Charanjit Kaur. This DDR pertains to 13.2.2010. The present complaint was filed on 2.6.2012. Thus, even at the time institution of the present complaint by the complainant Balbir Singh, he was not in possession of the original alleged forged Will dated 8.11.2008.

14. In the case titled as Budh Singh Vs. State of Haryana, 2010(2) RCR (Criminal), 353, the Hon'ble Punjab and Haryana High Court had held that, " in case of a offence of forgery, the

original document in respect where of forgery was committed, is not brought on record, conviction was liable to be set aside, as the offence of forgery can only be committed in relation to original documents and not with respect to the copies thereof”.

15. Further, it is seen that the complainant Balbir Singh has filed the present complaint in his own capacity. Though, he has referred to the registered General Power of Attorney executed in his favour by his late mother Mohinder Kaur as Ex.CW8/A entitling Balbir Singh complainant to deal with her movable and immovable properties in any manner, he likes, but Mohinder Kaur has not been examined by the complainant. This General Power of Attorney pertains to 27.1.2009, while Mohinder Kaur has expired on 15.11.2016. Thus, it is seen that Mohinder Kaur was alive at the time of institution of the present complaint and she never deposed as a witness in the present complaint. Further, the locus standi of the complainant is not clear. Though, he claims that he has filed the complaint on behalf of his late mother Mohinder Kaur being her power of attorney, but, perusal of the head note of the complaint shows that Balbir Singh had filed this complaint in his personal capacity and not as power of attorney of Mohinder Kaur. Also, during his cross examination as CW1, Balbir Singh had admitted that he has filed the present complaint in his personal capacity. He has also admitted that after the sanction of the mutation of the inheritance of his brother Ranjit Singh, the share of his late brother which came to his mother Mohinder Kaur was got transferred by him in his favour through transfer deed dated 13.2.2012. In other words, from its perusal, it clear that Balbir Singh was always interested in getting the share of his deceased brother Ranjit Singh and he simply used his mother Mohinder Kaur as a tool to grab the said share. The complainant has relied upon the affidavit of Ranjit Singh Lambardar proved as Ex.CW4/A. Perusal of this affidavit shows that he has stated that he had appeared as a witness to the said Will, under the

influence of intoxication and it was later on, he came to know that Ranjit Singh executant of the Will had already expired. Though, lambardar Ranjit Singh had deposed as CW4 through preliminary evidence during the present complaint, but, he subsequently died. The accused persons never got an opportunity to cross examine him as to check the veracity of his statement and affidavit, so tendered in the court. Even, otherwise, in the absence of production of original will on record, his testimony regarding the Will having been prepared fraudulently is of no help to the case of the complainant.

16. In view of the above discussion, the complainant has miserably failed to show a prima facie case, having been made out against the accused persons namely Charanjit Kaur and Raghubir Singh, and accordingly, they are discharged from the present case. Their bail bonds and surety bonds shall remain intact for a period of six months under section 437 A Cr.P.C. In case no 12 appeal or revision is filed within the said period then the bail bonds and surety bonds of accused shall automatically stand discharged and no separate order in this regard shall be passed. Accused no.3 Prem Kumar was declared as proclaimed person vide order dated 30.11.2015. The file shall be taken up as and when he shall surrender or is arrested by the competent authority. File be consigned to the Record Room, Khamanon.'

20. During the course of the revision petition before the Sessions Judge, Fatehgarh Sahib, the argument advanced on behalf of the petitioner are noticed by the learned Sessions Judge in para 4 of the judgement and the same reads thus:-

4. The petitioner who appeared in person stated that it has been duly proved that the WILL relied upon by the respondents was forged and fabricated document and the trial court has not considered this fact in the matter. He submitted that it has been duly proved from the examination of CW-4 Ranjit Singh Numberdar that the WILL was got signed from him. when he was under intoxication, He submitted that though Ranjit Singh

Numberdar died, but his testimony clearly proves that the WILL was metal. The Thumb Impression of Ranjit Singh on WILL dated 8.11.2018 was forged and schematically, In fact it has been duly proved that respondents lodged a false DDR that the WILL dated 8,11.2018 has been lost and this was done only to ensure that criminal proceedings are not initiated. Thus keeping in view above the present revision petition is liable to be dismissed.'

21. The finding recorded by learned Sessions Judge, Fatehgarh Sahib on the argument is as under:-

'6. I have heard heard the learned counsel for the parties and have gone through the records of the case very carefully. In the present case the main allegations of the complainant were that Charanjit Kaur fraudulently prepared the WILL dated 8.11.2018 vide which entire property was bequeathed in favorite of Charanjit Kaur. In the present case the original of alleged forged WILL dated 8.11.2018 has not been produced on record. Though complainant relied upon statement of Ranjit Singh Lambardar, who was examined in preliminary evidence and who proved affidavit as Ex-CW4, but from the said document also, it cannot be held that WILL dated 8.11.2018 was forged. A perusal of said affidavit shows that in the same he had not stated that he had not put his thumb impression on the same. He only stated that under intoxicating condition he had witnessed the WILL on the asking of benefactors of the WILL. Thus it cannot be said that respondents had forged the WILL dated 8.11.2018. Therefore, keeping in view above, Trial court had rightly held that complainant had miserably failed to prove prima facie case against the respondents and trial court had rightly discharged the respondents.'

22. Upon consideration of the submissions advanced by the learned Senior counsel for the petitioner and the findings recorded by the Courts below on the

same, there is nothing to suggest that the finding recorded by the Court is perverse, illegal, non-est or is unsustainable on appreciation of evidence.

23. A perusal of the narration of fact as given by the petitioner rather shows that the petitioner had claimed to have filed the complaint on behalf of his mother, the same is however not supported from the title of the complaint. Undisputedly, the petitioner had no right to succeed to the estate of Ranjit Singh (since deceased) and that at best Mohinder Kaur was the affected party. The matter has already been resolved amongst the parties and a compromise was effected upon and pursuant thereto, Civil Suit No. 277 instituted by Mohinder Kaur has been withdrawn by her. The original of the document (alleged forged Will) has not been produced before the Court. There is nothing to suggest that the Will in question was forged. The reliance of the petitioner on the affidavit of the Attesting witness would be inconsequential as has been noticed by the Sessions Judge that the said affidavit only shows that the witness said, he had witnessed the Will under the influence of intoxicant. The said witness thus does not dispute the execution of the Will and/or the fact that the said witness had appended his signatures to the Will in question. He only raises a dispute with respect to the circumstances under which he had appended his signatures. The same would not, in my opinion, render a finding that the Will is a forged document.

24. Insofar as, the second suspicious circumstance stressed by the learned counsel for petitioner with regard to the respondent No.2 not pressing upon the Will in the civil suit proceedings and compromising the same is concerned, it cannot be conceived as casting a doubt on the validity of the Will. The parties, being members of a family are at liberty to resolve the dispute amongst themselves through negotiations. Such settlement of dispute cannot be perceived to be proof or an acknowledgement of the testament being forged. The same would rather be

misreading of the settlement amongst the parties and the Court cannot stretch any suggested inference and to permit the allegations to substitute for evidence. The Courts below have held that there is no *prima facie* evidence to infer that the Will was a forged document. The said observation cannot be held to be not plausible or possible on the basis of evidence brought before it or to be perverse, illegal or in complete disregard to the statutory provisions.

25. The existence of suspicion alone, if any, would not satisfy the existence of a *prima facie* case or grounds to proceed further. The evidence and material on record should satisfy the judicial conscience. Framing of a charge against an accused has serious consequence upon liberties of an individual and hence must be for valid reasons. Learned Senior counsel for the petitioner has failed to indicate existence of any material on the Court file or the evidence recorded during the proceedings under Section 244 CrPC as would satisfy the test prescribed under Section 245 CrPC.

26. The jurisdiction of the High Court under Section 482 CrPC is to be invoked to examine whether there is any manifest error of law or procedure; or when there is such an apparent illegality, procedural irregularity that would vitiate the trial, legal infirmity or gross mis-appreciation of the evidence that is not likely to reconcile to the conclusions drawn by the Court.

28. In view of the above, finding no merits in the arguments advanced by the learned Senior counsel and the pleadings on record, the instant petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

February 28, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>