

CRR-660-2022

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

**CRR-660-2022 (O & M)
Date of decision: 26.04.2022**

Jaswinder Singh @ Jassa and others

...Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Deepak Aggarwal, Advocate,
for the petitioners.

HARNARESH SINGH GILL, J.

Challenge in the present revision is to the order dated 05.01.2022 passed by the learned Addl. Sessions Judge, Patiala, to the extent that charges under Section 66(E) of the Information Technology Act, 2000 and Section 3(1) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, 'SC/ST Act') have wrongly been framed against the petitioners.

Learned counsel for the petitioners has contended that the petitioners were having some money dispute with complainant-respondent No.2, which had been settled with the intervention of the panchayat of the village, as would decipher from the settlement Annexure P-1. The alleged video on the basis of which the charges under Sections 66(E) of the Information Technology Act, 2000 and Section 3(1) (s) of

CRR-660-2022

the SC/ST Act were been framed, have not been attached with the challan. The trial has wrongly framed the impugned charges without existence of any material justifying either taking of cognizance or framing of the charges.

Learned counsel for the petitioners further submitted that the trial Court, without looking into the facts and circumstances of the case, framed the charges under Section 3 (1) (s) of the SC/ST Act, and Section 66 (E) of the Information Technology Act. He further contended that to cover up the aforesaid lacuna existing in the case of the prosecution, the investigating agency recorded the statement of respondent No.2-complainant that he would produce the copy of compromise and the alleged video in the Court, if requires, and that the provisions of Section 65 of the Indian Evidence Act have not been complied with. In support of his contentions, the learned counsel relies upon the decision rendered by the Orissa High Court in Pramod Kumar Nayak Vs. State of Orissa, 1989 Cri.L.J. 1041 and by a Coordinate Bench of this Court in 'Nain Sukh Dass Sukh Ram Dass Parvarik Dharamarth Trust (Regd.) Vs. State of Haryana and others 2014(10) R.C.R. (Criminal) 2513.

I have heard the learned counsel for the petitioners.

The genesis of the present controversy is traceable to an FIR No.165 dated 25.07.2020, registered at Police Station Sadar Nabha, in connection with an incident wherein the petitioners are said to have wrongfully confined the complainant and uttered casteist remarks to him and made video of inflicting injuries to him and made the same viral on social video.

CRR-660-2022

At the time of framing of charge, the Court is only required to *prima facie* presume whether a case against the accused person(s) may be made out and that the facts that emerge from the case may be taken at face value; if they disclose the existence of ingredients constituting the alleged offences, then the charges may be framed.

The scope of interference under [Section 397](#) Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. At the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the provisions of Cr.P.C.

The argument of learned counsel for the petitioner that the alleged video has not been attached with the challan report and the provisions of Section 65 of the Indian Evidence Act, have not been complied with, cannot be appreciated at this stage for the reason that at the time of framing of charge, the degree of belief is only presumption. The word 'presuming', must be read ejusdem generis to the opinion that there is a ground for forming an opinion that the accused person(s) has committed the alleged offence(s). It would also be immaterial whether the said opinion has been formed either on the basis of direct, or circumstantial evidence.

The Hon'ble Supreme Court in '[State of Rajasthan](#)' Vs.

Fatehkaran Mehdu 2017(2) RCR (Criminal) 1, has held as under:

27. Now, reverting to the limit of the scope of jurisdiction under [Section 397 Cr. P.C.](#), which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander and Another**, 2012 (4) RCR (Criminal) 377: 2012 (4) Recent Apex Judgments (R.A.J.) 509: (2012) 9 SCC 460, where scope of Section 397 Cr.P.C., have been succinctly considered and explained. Para 12 and 13 are as follows:

"12. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the

exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

“29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of

CRR-660-2022

a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

30. Applying the above tests, we are of the considered opinion that High Court erred in quashing the charges framed by the order dated 05.05.2009. In result, both the appeals are allowed. The order of the High Court is set aside and the order dated 05.05.2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously.”

Applying the above guidelines laid down in Fatehkaran

Mehdu's case (supra), this Court does not find a case to be made out so as to warrant any interference.

Dismissed.

26.04.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No