

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

**CRM-M No.5734 of 2017
Date of Decision : 31.08.2022**

Ram Karan

.....Petitioner

vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Raman Chawla, Advocate
for the petitioner.

PANKAJ JAIN, J.

By way of present petition filed under Section 482 Cr.P.C., the petitioner has laid challenge to the order dated 14th of December, 2016 passed by the Revisional Court whereby order passed by the Additional Chief Judicial Magistrate, Karnal discharging the accused has been affirmed.

2. Petitioner set the law into motion by filing a complaint against the respondents. It was alleged that the complainant is an illiterate person, who was allotted a plot by HUDA in Karnal. The petitioner deposited all the installments. The complainant alleges that since he was a tenant under accused No.1-Shamsher Singh, who used to take thumb-impressions of the complainant on stamped papers/blank-papers. On 8th of January, 2003, complainant received

a communication from Estate Officer, HUDA that one of the accused namely Ajay Pal Singh has produced GPA alleged to be executed by the complainant. However, the specimen signatures of Ajay Pal Singh i.e. accused No.2 have not been attested by the complainant. Consequently, the petitioner was asked to come present before the Estate Officer HUDA to give clarification. It was also mentioned that in case nothing is heard from the complainant, the GPA will be treated as cancelled. Complainant further alleged that in fact the accused persons in connivance with each other executed GPA by misusing the blank-papers having thumb impressions of the complainant to forge his GPA and on the strength thereof accused No.2 Ajay Pal Singh got the plot, in question, transferred in the name of his mother Satya Devi. Satya Devi further sold the plot to one Amita Mann wife of Joginder Mann.

3. The complainant was examined. Thereafter, the complaint was sent to SHO concerned for investigation under Section 202 Cr.P.C. Police submitted its report on 2nd of June, 2010. After evaluating the evidence, Trial Court found that the plot was allotted to the complainant in the year 1996. He deposited a sum of Rs.71,500/- in the office of Estate Officer, HUDA, Karnal. The allotment was cancelled by High Court and complainant withdrew the amount deposited, on 14th of August, 1997. The allotment was

restored by Apex Court and the complainant was issued fresh allotment letter dated 13th of March, 2002. Trial Court after examining the evidence on record returned the following findings :-

“10. The case of the complainant is that he never appeared in the HUDA Office, Karnal in order to file any application but CW1 who is official of the HUDA who has brought the original record pertaining to plot no.342-P Sector-8, Karnal has deposed that Ram Karan has filed an applications Ex.C4 and Ex.C7 in the office of Estate Officer, HUDA, Karnal and an affidavit Ex.C8. So, as per the testimony of CW1, it is evident that complainant himself has submitted registered GPA in favour of accused no.2 in the office of HUDA, Karnal and as per the FSL report dated 6.6.2007 prepared by the police during the investigation under Section 202 Cr.P.C, it is evident that Ex.C5, Ex.C6 and Ex.C8 bear the thumb impressions of the complainant and as per C6 complainant has deposited three attested signatures of accused Ajay Pal and has also submitted his thumb impressions attested by Estate Officer in the office of HUDA. Moreover, Ex.D7 is a registered document and it carries presumption regarding its due execution as per law and complainant has failed to adduce any cogent evidence on the basis of which it can be inferred that he did not appear in Delhi at the time of execution of Ex.D7. The complainant in his cross examination has also admitted that he is having account in the Hissar District Central Co-op Bank Limited, Hissar and he has also admitted that two drafts of Rs.49,900/- were

deposited in his account. He has further admitted that at the time of withdrawal of Rs.50,000/- he put his thumb impression on Ex.12 on 6.9.2002 and similarly he put his thumb impression on Ex.C13 on 2.1.2003 for withdrawal of Rs.49,500/-.

11. Admittedly, complainant is Namberdar of village and all the HUDA, Karnal bear his thumb applications which he gave to impressions and also got registered GPA in favour of accused no.2 and in that circumstance merely on the basis of oral evidence of complainant, it cannot be inferred that accused got prepared his thumb impressions by playing fraud. As per Section 245 of the Cr.P.C. if upon taking all the evidence adduced by the complainant as per Section 244 Cr.P.C if Magistrate consider that no case against the accused has been made out which, if unrebutted, would warrant the conviction of the accused then the Magistrate shall discharge the accused. So, in the instant case complainant has failed to adduce any cogent and convincing evidence. So, no case against the accused persons is made out consequently, as per the provisions contained under Section 245 Cr.P.C., accused are discharged. Their bail bonds and surety bonds stands discharge. File be consigned to the record room after due compliance."

4. The Revisional Court found that there is no infirmity or illegality in the order passed by the Trial Court and, thus, dismissed the revision filed by the petitioner.

5. I have heard Ld. Counsel for the petitioner and have

carefully gone through the record of the case.

6. It has come on record that the that the petitioner is Headman (Lambardar) of the village. Keeping in view the nature of his job, he is required to sign/thumb-mark almost every document executed by the villagers. Thus, the plea w.r.t. his handing-over blank paper to the accused and he feigning ignorance *qua* execution of GPA etc. cannot be believed. It has also come on record that after petitioner deposited initial amount of the plot, balance consideration of the same amounting to Rs.1,70,000/- was deposited by respondent No.2. General Power of Attorney is a registered document. The same does not only bear thumb-impression of the complainant but also his photograph. Exhibit D-11 is an agreement to sell executed by the petitioner in favour of accused Ajay Pal Singh. Similarly, Exhibit D-15 registered Will was also executed by the complainant in favour of accused Ajay Pal Singh. The agreement to sell was executed by the complainant for consideration. The said consideration was paid through demand drafts dated 27th of August, 2002. The said amount was admittedly received by the complainant. The demand drafts amounting to Rs.49,900/- each were deposited in his account which admittedly have been withdrawn by him. In view of the aforesaid overwhelming evidence that has come on record, Trial Court was right in discharging the accused persons finding that no case is

made out against them. Trite it is that as per Section 245 of the Cr.P.C. at the stage of framing of charge, the Trial Court is under obligation to see, 'whether *prima facie* case is made out against the accused or not ?' The law relating to 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*. In the case of '**Asim Shariff vs. National Investigation Agency, 2019(7) SCC 148**', Apex Court held that :-

“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 v. Prafulla Kumar Samal & Ors., 1979 (3) SCC 4** 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.”“

7. Similarly, in the case of '**Hardeep Singh vs. State of Punjab, 2014(3) SCC 92**', Apex Court reiterated the aforesaid proposition of law holding that :-

“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)."

8. Division Bench of this Court in **CRA-D No.212 of 2022** titled as '**Jagtar Singh Johal @ Jaggi vs. NIA and another**', decided on 19th of April, 2022, held that :-

"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."

9. Applying the aforesaid '*prima facie* test' to the facts of the present case, Trial Court was right in holding that on the basis of the material, no offence against the accused persons is made out. Consequently, no illegality can be found with the orders impugned in the present petition.

10. The same is, thus, dismissed being devoid of merits.

August 31, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No