

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

**CRM-M-54418 of 2022(O&M)
Date of Decision: 24.11.2022**

Baldev Mitter & Ors

...Petitioners

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Ram Kumar Chauhan, Advocate
For the petitioner.**

Mr. C.L. Pawar, Addl. AG Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioners seeking quashing of order dated 06.10.2022 (Annexure P-5) passed by the Court of learned Judicial Magistrate Ist Class, Hoshiarpur whereby the application filed by the petitioners under Section 239 Cr.P.C. was dismissed and charges are framed against them under Sections 420, 465, 467, 468, 471 read with Section 120-B IPC.

Notice of motion.

Mr. C.L. Pawar, Addl. AG Punjab accepts notice on behalf of the State and has resisted the present petition.

The counsel for the petitioners contends that the petitioners filed an application under Section 239 Cr.P.C. seeking their discharge in the aforesaid criminal case. The said application was contested by the State and

it filed reply to the said application and finally the learned trial Court passed impugned order dated 06.10.2022. The counsel for the petitioners further submits that in the impugned order there is no mention of any such application filed by the petitioners under Section 239 Cr.P.C. The counsel for the petitioners further submits that as per the prosecution version petitioner No.2 forged one lease deed in his favour. The counsel for the petitioners further submits that petitioner No.1 Baldev Mitter was neither beneficiary nor signatory to the said lease deed and thus no *prima facie* offence is made out against petitioner No.1. The counsel for the petitioners further submits that the impugned order is cryptic and as such deserves to be set aside.

On the other hand the State counsel submits that there is no illegality in the impugned order. That on the basis of the report submitted by the police under Section 173 Cr.P.C. coupled with the supporting documents, *prima facie* case is made out against all the petitioners and consequently the trial Court passed the impugned order whereby charges have been framed against the petitioners.

I have considered the submissions made by counsel for the parties.

From the perusal of Annexure P-3 it is evident that the petitioners filed an application before the trial Court under Section 239 Cr.P.C. seeking their discharge in the case. The State filed reply to the said application and the copy of the same is Annexure P-4.

After hearing the counsel for the parties, the trial Court passed the following order dated 06.10.2022 (Annexure P-5):-

“Arguments heard. After finding a prima facie case charge under Sections 420, 465, 467, 468, 471 IPC read with Section 120B IPC have been framed against all accused. Contents of the charges have been read over and explained to all the accused in simple language to which accused pleaded not guilty and claimed trial. Detailed of expression to opinion is avoided keeping in view the law laid down in Kanti Bhadra Shah and another Vs. State of West Bengal 2000(1) CSR 27.”

The aforesaid order has been impugned by the petitioners in the present petition. From the perusal of the impugned order it is clear that the same is silent with regard to the application (Annexure P-3) filed by the petitioners under Section 239 Cr.P.C. The Hon'ble Apex Court in CrI. Appeal No. 472 of 2021 titled **Sanjay Kumar Rai Vs. State of U.P.** decided on 07.05.2021 observed that 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. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is the duty of the Court to discharge the accused.

Further it is settled position of law that the Court while considering the question of framing the charges has the power to scrutinize 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 a *prima facie* case would depend upon the facts of each case and there is no general rule of universal application in this regard. While framing the charges, the Court cannot act merely as a post office or a mouthpiece of the prosecution. This, however, does not mean that the Court should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial.

Now coming to the facts of the present case, it appears that the trial Court while passing the impugned order has not mentioned anything with regard to application filed by the petitioners under Section 239 Cr.P.C. and further not given any reasons for non acceptance of the said prayer made by the petitioners and furthermore the impugned order is silent as to whether the aforesaid application filed by the petitioners under Section 239 Cr.P.C. is dismissed.

For the aforementioned reasons the impugned order cannot be sustained in the eyes of law being illegal and accordingly the same is hereby set aside. The trial Court is directed to reconsider the entire matter and to pass fresh orders with regard to application moved by the petitioners under Section 239 Cr.P.C. and question of framing of charge against the petitioners, after hearing both the parties. The parties are directed to appear before the learned trial Court on 14.12.2022.

The present petition is disposed of in the aforesaid terms.

24.11.2022
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No