IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-688-2019 (O&M)
Date of Decision:-9.2.2023

Mandeep Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sameer Sachdeva, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab and
Mr. Siddharth Attri, AAG, Punjab
assisted by DSP Tejinder Pal Singh.

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GURVINDER SINGH GILL, J.

1. The instant revision petition is directed against order dated 25.2.2019 passed by learned Special Judge, CBI, SAS Nagar (Mohali) vide which an application filed on behalf of the petitioner–accused under Section 227 Cr.P.C. for his discharge has been dismissed.

2. A few facts necessary to notice for disposal of this petition are that the petitioner is a former IAS Officer, who retired on 31.3.2015 on attaining the age of superannuation. The petitioner had remained posted in the State of Punjab and held different assignments. A Vigilance inquiry i.e. Inquiry No. 2/2014 was initiated against the petitioner on 29.1.2014 on the allegation that the petitioner had amassed wealth much in excess of his known sources of income. The said inquiry was entrusted to Shri B. Chander Shekhar, IPS, I.G., Vigilance Bureau, Punjab. Response of petitioner was sought with regard to the movable and immovable assets owned by him as well as

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dependent members of his family, which was duly furnished on 21.7.2014. Both the sons of the petitioner as well as his wife were shown to be having independent income and were income tax payees. Income and expenditure chart was prepared by the Vigilance Bureau and given to the petitioner on 5.5.2015 for his comments which was received by way of representation dated 14.5.2015 and an income of Rs. 5,36,34,528/- was stated to be there in addition to the income of Rs. 4,57,54,983/- which had been assessed by the Vigilance Bureau. It was, thus, claimed that the petitioner had a total income of Rs.9,93,89,511/- during the check period 1.4.1998 to 31.3.2014 and that as such, the expenditure, which had been assessed as Rs. 7.5 crores, was less than the said income.

3. FIR No. 12 dated 26.8.2015 was lodged against the petitioner at Police Station Vigilance Bureau, Phase-I, Mohali with the allegation that while the income of the petitioner, as per his known sources, was Rs.4,79,82,910/- during the check period 1.4.1998 to 31.3.2014, the petitioner had, however, incurred an expenditure of Rs. 7,55,74,250/-. In other words, an expediture of Rs.2,75,91,340/- was alleged to have been made in excess of known sources of income. Upon conclusion of investigation, a challan was presented on 8.3.2017 (Annexure P-4). The petitioner moved an application dated 31.8.2018 (Annexure P-7) seeking his discharge. The trial Court considered the matter pertaining to consideration of charge and upon finding sufficient grounds to frame the same, ordered accordingly and charges were framed on 31.8.2018 itself. At this stage, it is relevant to refer to a paragraph from the said order dated 31.8.2018 (Annexure P-8), which is reproduced herein-under :-

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> "Arguments on the charge have already been advanced by Shri Anil Kaushik Advocate counsel for the accused Makhan Singh but other accused have not been addressing the arguments either in person or through their counsel. Number of opportunities have already been granted earlier to address the arguments but the accused by moving different applications have been trying to delay the matter. Moreover, in CRM No.M-32726 of 2018 the Hon'ble High Court has directed this Court to proceed with the trial as per law and further that if, again such type of application is filed by the accused, that may be decided by conducting day-to-day proceedings. It has been further directed to this Court to send the report to this Court after three months regarding status of the case. So in these circumstances, this court has no other option but to peruse the record itself to pass an order regarding charge."

4. The petitioner challanged the aforesaid order dated 31.8.2018 (Annexure P-8) by way of filing CRR-187 of 2019, which was disposed of by this Court vide order dated 5.2.2019 (Annexure P-10). The said order is reproduced herein-under :-

> "This petition has been filed challenging the order dated 31.8.2018 whereby charges were framed against the petitioner.
>
> The primary ground taken by learned counsel for the petitioner is that an application for discharge was made and the same was not considered while framing the charge. Notice of motion was issued. Learned Senior DAG has pointed out that in this case FIR was lodged in the year 2015 and the challan was filed in the year 2017. Thereafter, the various accused persons have been delaying the proceedings as has been reflected in the order itself. Even on the date in question i.e. 31.8.2018 the case was fixed for framing of charge and at that stage the present application was moved. The Trial Court relied upon the directions of this Court passed in CRM-32726-2018 in which this Court had directed the Trial Court to proceed with the trial and framed the charge. The precise contention of the learned counsel is that the charge could not have been framed without first deciding the application for discharge. In my opinion, in view of the direction given by this Court the Trial Court was justified in framing the charge even while seeking the reply. <u>In case</u>

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after reply is filed the Court comes to the conclusion that the application for discharge should be allowed, the Court can well do it and no prejudice has been caused to the petitioner.

Consequently, the petition stands dismissed.

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

Sd/-

5.2.2019 (AJAY TEWARI)
JUDGE"

5. Since in the meantime, the State had filed its reply dated 27.9.2018 (Annexure P-7/A), the trial Court considered the said reply in context of the allegations, as levelled against the petitioner and passed a very detailed order dated 25.2.2019 (impugned order) noticing all the allegations and did not choose to discharge the petitioner.

6. The learned counsel for the petitioner, while assailing the aforesaid order dated 25.2.2019, has submitted that the trial Court has not given sufficient reasons for not discharging the petitioner in its order dated 25.2.2019 and that by not doing so, the same virtually amounted to non-compliance of order dated 5.2.2019 (Annexure P-10). The learned counsel has further submitted that all the details of income have not been considered by the trial Court while passing the impugned order dated 25.2.2019 and which has resulted in miscarriage of justice. The learned counsel, in order to hammer forth his aforesaid submission, has submitted that the income of the petitioner has been incorrectly taken to be about Rs.82 lacs whereas the same is much more than that. It has been submitted that while the income from salary of the petitioner has been assessed as Rs.83,30,614/- during the check period 1.4.1998 to 31.3.2014 but infact his salary during the said check period was Rs.1,22,86,842/-, which itself is a difference of about

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Rs.39,56,228/-. It has been submitted that in case all the calculations had been minutely examined, it would have surfaced that as a matter of fact the aggregate income of the petitioner was much more than Rs. 10 crores whereas the expenditure is stated to be about Rs. 7.5 crores.

7. The learned State counsel has, however, opposed the petition and has submitted that all the figures pertaining to income and expenditure have been minutely examined at the stage of investigation and also by the trial Court and that there is no room for taking a different view than what has been taken by the trial Court at the time of framing of charges vide order dated 31.8.2018 and also at the time of passing of impugned order dated 25.2.2019.

8. This Court has considered rival submissions addressed before this Court.

9. The trial Court had initially considered the question as regards framing of charges on 31.8.2018 and had ordered for framing of charges on the said date. The said order was challenged by way of filing CRR-187-2019 which was disposed of on 5.2.2019. The operative portion of said order dated 5.2.2019 reads as under :-

> "In case after reply is filed the Court comes to the conclusion that the application for discharge should be allowed, the Court can well do it and no prejudice has been caused to the petitioner."

10. It is pursuant to the aforesaid order that the impugned order came to be passed. A perusal of the impugned order shows that the trial Court had noticed all the facts pertaining to income and expenditure during the check period. Each and every transaction had been noticed. Though, it is correct that each of the transaction has not been thrashed threadbare in the said

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impugned order but at the stage of considering the framing of charges or discharge at that stage, the Court is not required to meticulously assess the quality of evidence and it is only the evidence in its entirety which has to be considered *vis-a-vis* the allegations against the accused. The authenticity of the evidence collected by the prosecution has to be tested at the stage of trial. During the course of arguments, the learned counsel had shown a copy of a report of some private C.A., as per which the income from salary of the petitioner was about Rs.1.2 crores as against the income of about Rs. 82 lacs, as assessed by the investigating agency. However, the said contention has been disputed by the learned State counsel on the ground that the income, as assessed by the investigating agency i.e. Rs. 82 lacs is the net income whereas Rs. 1.2 crores would be the gross income i.e. the income which would include deductions including statutory deductions like income tax. It is the net income which has to be taken into account, which has accordingly been considered. It is the net income only which a salaried person would be able to use and not the gross income without deduction of tax. In any case, such like arguments which are based on some additional documents so as to contradict or to demolish the calculations pertaining to the income and expenditure of the petitioner can be better thrashed at the stage of trial where the accused will get a chance to lead defence evidence and it would not be appropriate for this Court to embark upon a mini-trial at this stage. As such, this Court does not find any valid ground to set aside order dated 25.2.2019 passed by learned Special Judge, CBI, SAS Nagar (Mohali) or to direct the trial Court to consider the matter afresh, yet again.

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11. Needless to mention, it shall always be open to the petitioner to lead evidence in his defence before the trial Court at appropriate stage so as to demolish the case of prosecution.

12. The petition is sans merit and is hereby dismissed.

9.2.2023 **(Gurvinder Singh Gill)**
kamal **Judge**

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No

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