

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

285

CRM-M-19394-2021

DECIDED ON: 18.04.2023

Ram Kishan

.....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Abhilaksh Grover, Advocate, for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Vaibhav Prashar, Advocate,
for the complainant.

ANOOP CHITKARA, J (ORAL)

1. Petitioner has come before this Court for setting aside of the order dated 25.02.2021, passed by Additional District & Sessions Judge, Palwal, whereby the revision of the petitioner against the framing of charges was dismissed (Annexure P-7) and the order dated 29.04.2019 (Annexure P-5) passed by learned JMIC, Hodal, for framing charges under Sections 323, 325, 452, 506, 34 IPC in case FIR No. 257 dated 09.11.2017 as against the facts on record.

2. The limited ground on which the petitioner is seeking setting aside of order is that despite State subsequently absolving him after investigation because he was wrongly implicated, the concerned Court did not discharge him and framed charges.

3. Needless to say that once the charges were framed, it is beyond the jurisdiction of the said Court to rectify the mistake except alterations and as

such the concerned Court cannot be put to blame. However, it remains undisputed as mentioned specifically in paragraphs no.8,9,10 and 11 of the order of Revisional Court that the accused was initially implicated falsely. To corroborate the said fact, it is relevant to extract paragraphs no.8,9,10 and 11 of order dated 25.02.2021, which reads as under:-

“8 It is relevant to mention that a perusal of the final report submitted under Section 173 Cr.P.C, shows that Sections 148, 149 and 452 IPC were given up by the police and challan was filed against accused Ram Kishan, Vishnu, Rameshwar, Balram @ Bali and Hardayal on the ground that there are sufficient evidence against them. Although it was mentioned in the report u/s 173 Cr.P.C that on 24.11.2017 during the investigation Ram Kishan revisionist no.5 along with some other co-accused were found innocent but the challan has been filed against the Ram Kishan. It appears that his name was not mentioned inadvertently because along with the final report the details of the persons who were found involved in the crime has also been filed by the IO who has been forwarded to face trial and the name of Ram Kishan son of Dhandhu has been mentioned and he has not been found innocent or discharged by the police. The Court on the basis of material available on record found prima facie case against all the revisionists under Sections 323, 325, 452, 506, 34 IPC and charged them accordingly on 29.04.2019. Even the reply filed by the IO in Crm. no.120 of 2019 shows that Ram Kishan was not discharged by the police and on 25.08.2018 as Sh.Suman Kumar Inspector/SHO prepared the challan against all revisionists and forwarded the same to the Court. After framing of charge, an application was made by the police to the Court for discharge of the accused Ram Kishan but the same was

not entertained by the trial Court. Although, there is no application regarding this fact on the trial Court file but even otherwise that application was not maintainable because after framing of charge police cannot seek discharge of accused to whom he has already forwarded to face trial by forwarding a report u/s 173 Cr.P.C. Hence, when a challan has been filed against accused he cannot sought benefit of any proceeding by which he was found innocent by the police prior to the submission of the challan because a challan is filed when the Investigating agency is of the view that there are sufficient evidence available against the accused to face trial.

9. *Now at this juncture, it is pertinent to mention here that though at the stage of framing the charge against the accused, no detail order is required to be passed by the Magistrate, yet the stage of framing of charge cannot be termed as an empty formality. At this stage, no detail evaluation of facts by delving deep into the matter is required by the Trial Magistrate, but where prima facie allegations at their face value do not make out the commission of particular offence, then framing the charge under the said section will lead to an exercise in futility. It is no denying a fact that a Revisional Court is not expected to weigh evidence and the circumstances by marshalling the evidence by commenting upon the merits of the case. Commenting about the adequacy or inadequacy of the evidence is not in the arena of appreciation of facts at this stage by the Revisional Court. Disputed facts are not be appreciated by the Trial Court. Certainly Revisional Court is required to take into consideration any illegality or jurisdictional error committed by the trial Court in passing a particular order, which is not interlocutory in nature.*

Section 397 Cr.P.C empowers the Revisional Court to set at right the illegal orders.

10. A perusal of statement of complainant and other documents shows that prima facie case under Sections 323, 325, 452, 506, 34 IPC is made out against all the revisionists. The true impact of the statements of complainant and other witnesses having already been examined by the trial Court at the time of framing charge cannot be discussed by going into their pros and cons. This Court refrains from appreciating their statements in minutest detail because it is the task of trial Court which after holistically taking into consideration all the facts and circumstances has to take a rational decision in the matter. Thus, a prima facie case for framing charges under Sections 323, 325, 452, 506, 34 IPC is made out against all the accused. In these circumstances, the order dated 29.04.2019 passed by JMFC, Hodal is justified in the eyes of law so far as framing charges against all the accused is concerned. In the present case, the trial Court has appreciated the matter in right perspective and passed the impugned order. Therefore, no interference is warranted in the impugned order. Such impugned order cannot possibly be interfered with by this Court, in exercise of limited jurisdiction of this Court, unless and until, the same is illegal, pervers and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the revisionist, so the impugned order deserves to be and is hereby maintained in the present circumstances of the present case.

11. No other point, worth consideration, has been urged or pressed by the learned counsel for the revisionist.”

4. Counsel for the complainant opposed the petition and prayed for dismissal of the same.

5. Given the stand of the State, present petition is allowed. Impugned order dated 25.02.2021 (Annexure P-7) and order dated 29.04.2019 (Annexure P-5), passed by the Court below, vide which the charges were framed against the present petitioner Ram Kishan is set aside. He is discharged. Bail bonds and surety bonds, if any, furnished by him stand discharged. All pending applications, if any, stand disposed of.

18.04.2023
mamta

(ANOOP CHITKARA)
JUDGE

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