

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

**CRR-868-2022 (O&M)
Reserved on 09.01.2023
Pronounced on: 17.01.2023**

Narinderpal Singh Sidhu

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Harpreet S. Brar, Senior Advocate with
Mr. Kanwal Goyal, Advocate
Mr. Sumeetpal S. Sidhu, Advocate and
Mr. Govind Tanwar, Advocate
for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab
for respondent No.1-State.

Mr. A.P.S. Deol, Senior Advocate with
Mr. H.S. Deol, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

The accused petitioner is impugning the order dated 31.03.2022 passed by learned Additional Sessions Judge, Moga whereby charges were framed under Section 302, 307, 323, 188, 148 and 149 of the Indian Penal Code, 1860 (for short, 'the IPC').

Learned Senior Counsel for the petitioner has vehemently argued that the impugned order deserves to be set aside as charges have been wrongly framed under the aforementioned Sections by ignoring the report dated 04.05.2021 (Annexure P-5) submitted by a Special Investigation Team (SIT) which had given a categoric finding that it was not a case of homicidal deaths but a case of accidental death and as such offence under Section 304 of the IPC was made out and not under

Section 302 of the IPC.

Learned Senior Counsel for the petitioner has vehemently submitted that after the report under Section 173(2) of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') had been presented by the investigating agency, the Magistrate concerned vide its order dated 23.03.2021 had directed the investigating agency to conduct further investigation under Section 173(8) of the Cr.P.C., upon an application moved by the prosecution in the said regard. Thereafter, while carrying out further investigation in the matter, SIT consisting of Senior Police Officials was constituted. The SIT carried out a thorough investigation and then prepared a detailed report (Annexure P-5) wherein it concluded that it was not a case of murder under Section 302 of the IPC and instead concluded that an offence under Section 304 of the IPC had been committed. Accordingly, the report was submitted before the Trial Court after obtaining legal opinion of the District Attorney. Learned Senior Counsel has further vehemently contended that the Trial Court while framing charges under Sections 302, 307, 323, 188, 148 and 149 of the IPC vide impugned order gravely erred in ignoring the said report of the SIT and had acted contrary to the law laid down by the Hon'ble Supreme Court in ***Vinay Tyagi Vs. Irshad Alia alias Deepak : (2013) 5 SCC 762***. Learned Senior Counsel has submitted that in ***Vinay Tyagi's case (supra)*** the Hon'ble Supreme Court had categorically held that once a supplementary report had been filed after conducting further investigation under Section 173(8) of the Cr.P.C., it was incumbent upon the Trial Court to consider the same while framing charges, however, the Trial Court went ahead by passing

a cryptic and non-speaking order without following the drill of law inasmuch as no cogent reasons in support of the "prima facie" satisfaction had been recorded by it therein. Learned Senior Counsel further went on to urge that a perusal of the report of the SIT (Annexure P-5) makes it evident specially in view of the reasons cited therein that the only and only inescapable conclusion which would emerge is that deaths of Harminder Singh alias Babbu and Jasdeep Singh alias Bhola in the occurrence in question were purely accidental in nature and there was no material from which it could be remotely inferred that the deaths were homicidal in nature. Learned Senior Counsel, thus, vehemently submitted and prayed that the impugned order be set aside and the Trial Court be directed to re-frame charges after giving due consideration to the report of the SIT. In support of his submissions, learned Senior Counsel has placed reliance upon ***Vinay Tyagi's case (supra)*** and ***Luckose Zachariah @ Zak Nedumchira Luke and others Vs. Joseph Joseph and others; Criminal Appeal No.256 of 2022 decided on 18.02.2022.***

Per contra, Learned Senior Counsel appearing for respondent No.2 while opposing the prayer and submissions made by the counsel opposite has contended that no doubt the investigating agency was indeed directed to conduct further investigation and supplementary challan under Section 173(8) of the Cr.P.C. (Annexure P-7) was filed by the investigating agency before the Trial Court, however, the enquiry report of the SIT was neither made a part of the said supplementary report (Annexure P-7) nor was it separately filed in the prescribed format as a supplementary report. Therefore, it had no

sanctity in the eyes of law and still further, in the aforementioned circumstances, the judgment of the Hon'ble Supreme Court in ***Vinay Tyagi's case (supra)*** would be inapplicable to the case in hand. Learned Senior Counsel while drawing the attention of this Court to the supplementary report (Annexure P-7) has further submitted that the investigating agency after completion of further investigation had yet again submitted a report qua commission of offence under Sections 302, 307, 323, 188, 148 and 149 of the IPC and it had nowhere even by way of a whisper hinted towards the commission of an offence under Section 304 of the IPC. Learned Senior Counsel vehemently argued that the Trial Court was not bound by the recommendations of the SIT and merely because the Trial Court had framed charges under Sections 302, 307, 323, 188, 148 and 149 of the IPC would not by itself lead to an inference that the report of the SIT had been overlooked by the Trial Court. It was further urged by the Learned Senior Counsel that the mode and manner in which the occurrence in question had taken place and the nature of injuries sustained by the injured including the deceased, the Trial Court could not be faulted with for framing of charges which are under challenge before this Court. He still further vehemently submitted that the instant petition had been filed with an ulterior motive to buy time and delay the trial so as to tamper with material evidence and influence the eye witnesses. A prayer was, therefore, made for dismissal of the instant petition. In support of his submissions, Learned Senior Counsel has placed reliance upon ***Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey and others : 2022(4) RCR (Criminal) 45.***

I have heard learned counsel for the parties and perused the relevant material on record with their able assistance.

There cannot be any dispute qua the settled law as laid down by the Hon'ble Supreme Court in ***Vinay Tyagi's case (supra)*** that the Trial Court is bound to consider all the reports filed before it in terms of Section 173(2) of the Cr.P.C. as well as under Section 173(8) of the Cr.P.C., and also all other relevant records and documents which may have been submitted along with the above reports by the investigating agency, subject to the exclusions prescribed therein.

Adverting to the case in hand, this Court finds merit in the submissions made by Learned Senior Counsel for respondent No.2 that the report of the SIT (Annexure P-5) cannot be deemed to be a supplementary report under Section 173(8) of the Cr.P.C. as the same was not in the form as prescribed under Section 173(2)(i) of the Cr.P.C.

Before proceeding further, it would be relevant to reproduce Section 173 of the Cr.P.C., which reads as under:-

“173. Report of police officer on completion of investigation - (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170 (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

A perusal of the above reproduced provisions of law leaves no manner of doubt that a supplementary report under Section 173(8) of the Cr.P.C. just as a primary report under Section 173(2) of the Cr.P.C. must be in the form prescribed and still further, the provisions of Sub Sections 2 to 6 of Section 173 of the Cr.P.C. shall also be applicable to it. Therefore, it is evident that the report of the SIT is not in the prescribed format.

Even otherwise, if the report of the SIT, for the sake of arguments, is taken to be a valid supplementary report under Section 173(8) of the Cr.P.C., still the Trial Court cannot be faulted with for framing charges under Sections 302, 307, 323, 188, 148 and 149 of the IPC.

In a case where subsequent to the filing of a primary report under Section 173(2) of the Cr.P.C., a supplementary report under Section 173(8) of the Cr.P.C. is also filed, the Trial Court would be expected to and shall have to read both the reports co-jointly along with other documents submitted, to analyse their cumulative effect for determining as to whether grounds to presume the commission of an offence by the accused exists or not.

Section 228 of the Cr.P.C., which provides for framing of charges, reads as under:-

“228. Framing of charge - (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

The Hon'ble Supreme Court in ***Amit Kapoor Vs. Ramesh***

Chander and another : 2012(4) R.C.R.(Criminal) 377, while dealing

with the question of framing of charges has held as under:-

"10. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases

resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

11. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh, (1977)4 SCC 39 :

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But

at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.””

Applying the aforesaid ratio of law to the facts of the instant case, on a conjoint reading of the original report under Section 173(2) of the Cr.P.C. (Annexure P-3) and SIT report (Annexure P-5) as well as the supplementary report under Section 173(8) of the Cr.P.C. (Annexure P-7), the Trial Court was justified in arriving at a prima facie conclusion that there existed grounds to proceed against the accused and hence it rightly framed the charges under Sections 302, 307, 323, 188, 148 and 149 of the IPC on the basis of the material produced before it.

This Court finds no merit in the submissions made by the Learned Senior Counsel for the petitioner that in the absence of any reasons recorded in the impugned order for framing charges under

challenge, the impugned order deserved to be set aside. The Hon'ble Supreme Court in ***Bhawna Bai Vs. Ghanshyam and others : 2020(1) RCR (Criminal) 370*** has categorically and in explicit terms held that at the stage of framing of charges, the Court is not required to hold an elaborate enquiry, only prima facie case is to be seen and while framing charges under Section 228 of the Cr.P.C., the Court is not required to record detailed reasons. Further, in ***Kanti Bhadra Shah Vs. State of West Bengal : 2000(1) RCR (Criminal) 407***, the Hon'ble Supreme Court has observed as under:-

“11. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stage in the trial.....”

Still further, this Court fails to comprehend as to what prejudice has been caused to the petitioner by framing of charges under Sections 302, 307, 323, 188, 148 and 149 of the IPC as even the SIT in its report has not exonerated the accused but given an opinion that it was a case of falling within the ambit of Section 304 of the IPC instead of Section 302 of the IPC. Therefore, if on the basis of evidence adduced by the parties during trial the Trial Court is satisfied that an offence under Section 304 of the IPC has been committed instead of

offence under Section 302 of the IPC, the petitioner and the other accused in that eventuality would be convicted under Section 304 of the IPC, it being a cognate offence of Section 302 of the IPC, for which lesser punishment has been provided. Still further, in case on the basis of evidence adduced, the Trial Court arrives at a finding that no case at all is made out against the petitioner and other accused then they would be acquitted accordingly.

This Court has no hesitation in holding that the impugned order does not warrant interference. This Court is thus not inclined to invoke its revisional jurisdiction.

Dismissed.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

17.01.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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