

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

248.

CRM-M No.37116 of 2018 (O&M)

Date of Decision:19.12.2023

Ram Lal and others

... Petitioners

Versus

Bhagat Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ashok Giri, Advocate
for the petitioners.

Mr. Vijay Lath, Advocate
for respondent No.1.

Mr. Madhur Sharma, AAG, Haryana
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for setting aside of the impugned order dated 23.05.2018 (Annexure P-6) passed by the learned Revisional Court (Additional Sessions Judge, Rupnagar) whereby well-reasoned order dated 16.09.2017 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Rupnagar dismissing the complaint bearing No.RT-235 dated 11.08.2011/26.05.2015 under Sections 406, 420, 467, 468, 471, 120-B IPC, has been set aside.

2. In brief, the facts are that respondent No.1-complainant filed a complaint against the petitioners alleging therein that petitioners No.1 and 2 received old age pension of ₹250/- per month by mentioning wrong date of birth in connivance with petitioner No.3, who was Sarpanch of the village at the

relevant point of time. The petitioners are summoned to face trial in the said complaint under Sections 177, 199, 200, 417 IPC.

3. Learned counsel for the petitioners contends that the petitioners are more than 70 years of age and have been dragged into a malicious litigation by the respondent No.1-complainant, who is habitual of filing false complaints and later on withdraw the same after taking hefty amount from the accused persons. The learned trial Court has passed a well reasoned order by holding that *prima facie* evidence is not available against the petitioners and instead of framing the charges, learned trial Court has dismissed the complaint itself by recording cogent reasons and the impugned order is based on erroneous consideration and non-application of judicious mind and the Revisional Court fell into grave error by holding that the trial Court has gone into the stage of examining of evidence. Out of five findings recorded by the trial Court for dismissing the complaint, only one was based on Ex.DW1/2 in defence by the petitioners. The Revisional Court while remanding the matter back to the trial Court to reconsider the question of framing of charges on the basis of pre-charge evidence led by respondent No.1 had also directed the trial Court to make an endeavour to conclude the trial at the earliest possible and the said observation would cause grave prejudice to the petitioners.

4. Per contra, learned counsel appearing for the respondent No.1-complainant submits that the learned trial Court has adopted the approach, which is alien to the procedure prescribed under the Code of Criminal Procedure and therefore, the learned Revisional Court has rightly remanded the case back to the trial Court.

5. Having heard learned counsel for the petitioners, this Court finds no merit in the arguments advanced by learned counsel for the petitioners. It is a

trite law that at the time of framing of charges, the probative value of material available on record is not to be seen and only the *prima facie* view is to be seen. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the Investigating Agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Sections 227/239/240 of Cr.P.C., the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a *prima facie* case exists depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature and judgmental law on this issue, it could be safely concluded that at the stage of forming an opinion under Sections 227/239/240 of Cr.P.C, the learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record if taken at their face value disclose the existence of all the ingredients constituting the offence. The trial Court cannot consider the probable defence of the accused in the case at this stage.

6. The Hon'ble Supreme Court has in extenso laid down the principles for the purpose of framing of charges in ***P.Vijayan Vs. State of Kerala (2010) SCC 398***. Recently, the Hon'ble Supreme Court examined the issue involved

in the present case in State through ***Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206*** where a two Judge Bench, speaking through Justice J.B. Pardiwala, concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into.

7. In view of the above discussion, no ground for setting aside the order dated 23.05.2018 is made out. Consequently, the instant petition stands dismissed. However, the observation of the learned Revisional Court to the extent of directing the learned trial Court to make an endeavour to conclude trial at the earliest possible is expunged.

8. Needless to say, nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

9. Keeping in view the fact that petitioners are stated to be more than 70 years of age and putting in appearance on each and every date before the trial Court would cause them immense hardship and inconvenience, their personal appearance before the learned trial Court is ordered to be exempted, in view of the ratio laid down by this Court in CRM-M No.25963 of 2023 titled as ***Suresh Kumar and another Vs. The State of Haryana and another 2023 (2) Law Herald 1498***, subject to the following conditions:-

- i). Petitioners shall be represented through his counsel;
- ii). Shall not delay/stall the trial proceedings;
- iii). Shall not dispute their identity as accused;
- iv). Shall have no objection if the prosecution evidence is recorded in their absence but in the presence of his counsel;

- v). Shall appear before the trial Court as and when required; and
- vi). Any other condition, which the trial Court may impose.

(HARPREET SINGH BRAR)
JUDGE

December 19, 2023
Pankaj*

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