

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

CRM-M-23047-2023

Date of Decision : 31.05.2023

Rajender Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Anshumaan Dalal, Advocate
for the petitioner.

VIKRAM AGGARWAL, J

1. The present petition, filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') assails the order dated 18.05.2022, passed by the Addl. Chief Judicial Magistrate, Kurukshetra vide which the application moved by the petitioner for discharging him in case FIR No.121 dated 27.03.2019, registered under Sections 409, 420, 120-B, 188 IPC and Section 61 of the Excise Act, at Police Station Sadar Thanesar, District Kurukshetra was dismissed and he was charge-sheeted under Sections 409, 420, 188, 120-B IPC and Section 61(1)(a) of the Excise Act, 1914.

2. It is indeed strange that the petitioner who is a Sub Inspector in the Haryana Police is in the docks for having misappropriated more than 700 boxes of liquor recovered by him from a truck and having sold them to a person by the name of Sandeep. Initially FIR No.620 dated 22.12.2018 was

registered under Sections 383, 337, 304-A IPC at Police Station Sadar, District Kurukshetra as a truck had been found in an accidental condition. Subsequently on the complaint of the present petitioner, FIR No.621 dated 23.12.2018 was registered under Sections 120-B, 420, 467, 468, 471 IPC and Section 61 of the Excise Act, 1914 (Annexure P-3). In the said FIR, it was stated that a bill bearing built No.3265546058 dated 21.12.2018 and a permit dated 01.10.2018 were found in the cabin of the aforesaid accidental truck. As per the built, total 1700 boxes of liquor make 'Karezy Romio' was found in the backside of the said truck out of which most of the boxes had been damaged due to the accident. As per the FIR, efforts were made to contact the Excise Inspector for getting information regarding the recovered liquor but he could not be contacted and even the mobile numbers written on the bills and permit were not reachable. It was thus stated that it appeared that the documents had been prepared by the truck driver Naresh Kumar in connivance with the owner of the truck. Ultimately, it was found that infact more than 700 boxes of liquor had been sold by the present petitioner to one Sandeep and consequently FIR No.121 dated 27.03.2019 was registered under Sections 409, 420, 120-B, 188 IPC and Section 61 of the Punjab Excise Act.

3. Vide order under challenge, the application for discharge moved by the petitioner was dismissed and charges were framed as have been mentioned in the opening part of the judgment.

4. Learned counsel for the petitioner has strenuously urged that the trial Court gravely erred in dismissing his application for discharge and in framing charges against him. It has been contended that the case was simply

based on a disclosure statement and, therefore, the same was not admissible in evidence. Learned counsel has contended that initially in the previous final report dated 23.05.2019 (Annexure P-6), the petitioner had been found to be innocent but subsequently in the supplementary final report dated 15.09.2019 (Annexure P-7), the petitioner was arrayed as an accused. Learned counsel has submitted that no case is made out against the petitioner and under these circumstances, the impugned order deserves to be quashed.

5. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit.

6. Before advertng to the merits of the case, it would be essential to examine as to what are the principles that have to be kept in mind at the stage of framing of charges. In the case of **Onkar Nath Mishra and others Vs. State, 2008(1) Crimes 42**, the Hon'ble Supreme Court of India held that at the stage of framing of charge, the Court has to see if the material and documents placed before it disclose ingredients of the offence and that at this stage, strong suspicion would justify the framing of charge. It was held that it is not to be seen whether the material was sufficient to convict the accused or not. The relevant paragraphs of the Judgment are reproduced here-in-below:-

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a

ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

12. In *State of Karnataka v. L. Muniswamy*, (1977)2 SCC 699, a three judge Bench of this Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasized.

13. Then again in *State of Maharashtra and others v. Som Nath Thapa and others*, 1996(2) RCR(Criminal) 480 : (1996)4 SCC 659, a three judge Bench of this Court, after noting three pairs of sections viz. (i) Sections 227 and 228 insofar as sessions trial is concerned; (ii) Sections 239 and 240 relatable to trial of warrant cases; and (iii) Sections 245(1) and (2) *qua* trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus :

"if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

14. In a later decision in *State of M.P. v. Mohanlal Soni, 2000(3) RCR(Criminal) 452 : (2000)6 SCC 338*, this Court, referring to several previous decisions held that the crystallized judicial view is that at the stage of framing charge, the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

7. Recently, in the case of *Bhawna Bai versus Ghanshyam and others 2020 (1) R.C.R. (Criminal) 370*, a Three Judges Bench of the Hon’ble Supreme Court of India held that at the stage of framing of charges, the Court has only to see if there is sufficient ground for proceeding against the accused and is not required to record reasons as to why such charge was being framed. It was held by the Hon’ble Apex Court that at the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that accused had committed an offence which, if put to trial, could prove him guilty. It was held that all that the Court has to see is whether the material on record and the facts could be compatible with the innocence of the accused or not and that the final test of guilt is not to be applied at that stage. In the case of *State of Uttar Pradesh and anr. versus Akhil Sharda and ors. 2022 (3) R.C.R. (Criminal) 841*, the Hon’ble Apex Court held that no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C.

8. Reverting to the facts of the present case, there are extremely serious allegations against the petitioner who is member of a disciplined force. He is alleged to have misappropriated more than 700 boxes of liquor recovered from a truck and is alleged to have further sold them off. These

facts would have come in a disclosure statement only because the person from whom ultimately the liquor was recovered namely Sandeep disclosed during interrogation that he had purchased the liquor from the present petitioner. There is, therefore, a strong suspicion which arises against him necessitating the framing of charges. Another fact which needs to be noticed here is that the impugned order was passed as far back as in May, 2022 and no revision petition was preferred by the petitioner against the said order and the petitioner has chosen to invoke the jurisdiction of this Court under Section 482 Cr.P.C. after almost one year of the impugned order having been passed.

9. Be that as it may, if one examines the facts of the present case and the law on the subject as discussed in the preceding paragraphs, it becomes clear that there was no ground to discharge the petitioner and, therefore, the trial Court did not commit any illegality in rejecting the said application for discharge, filed by the petitioner and framing the charges against him.

In view of the aforementioned facts and circumstances, I do not find any merit in the present petition and the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

31.05.2023
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No