

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-28572-2023 (O&M)
Date of Decision:-2.6.2023

Jasbir Singh and another Petitioners

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kamaldip Singh Sidhu, Advocate for the petitioners.

Ms. Swati Batra, DAG, Punjab.

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GURVINDER SINGH GILL, J. (Oral)

1. The petitioners assail order dated 24.5.2023 (Annexure P-5) passed by learned Additional Sessions Judge, Jalandhar, vide which an application filed by them seeking summoning of record at the stage of consideration regarding framing of charges, has been declined.
2. The petitioners are named in FIR No.12 dated 5.11.2014 registered at Police Station Vigilance Bureau, District Jalandhar, under Sections 409, 120-B of Indian Penal Code and Sections 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Annexure P-1). The allegations, as per FIR, in nutshell are that upon a surprise checking of stocks of wheat bags stored in three godowns of PUNSUP, at Shahkot, District Jalandhar (D.K. Open Palinth Godown, Bains Covered Godown and Bains Open Palinth

Godown), it was found that there was shortage of 11,346 bags in respect of the stocks for the year 2013-14 and year 2014-15. It is alleged that during physical verification, 100% weighment of only two stacks was conducted and that while stacks appeared to be proper and complete from outside, but from inside there was deficiency. It is alleged that on the basis of deficiency found in two stacks (228+267), the average deficiency per stack would be 248 bags and as such, total deficiency in respect of 273 stacks was feared to be of about 67,704 bags. It is alleged that Jasbir Singh, District Incharge, PUNSUP, Jalandhar, Yadwinder Singh, Field officer PUNSUP Jalandhar, Chaman Lal Inspector-2 Double Locker and Sukhminder Pal son of Mahinder Pal. Labour and Cartage Contractor (2014-15), Shahkot Center, District Jalandhar had connived together and were directly responsible for the shortages.

3. The matter was investigated by the police and challan was presented. The petitioners moved an application dated 1.12.2022 (Annexure P-3) seeking issuance of directions to prosecution to furnish certain documents, which are in the nature of inquiry reports etc. The said application was resisted by the State and a reply was filed. The Trial Court, upon considering the said application, dismissed the same vide impugned order dated 24.5.2023 (Annexure P-5).
4. The learned counsel for the petitioners submits that the documents sought to be summoned are of sterling nature and will go to root of the case and that in case the same are not provided to them, the petitioners would stand seriously prejudiced. The learned counsel, in order to hammer forth his aforesaid submissions places reliance upon State of Orissa vs. Debendra Nath Padhi

2005(1) SCC 568 and Nitya Dharamananda alias K. Lenin and Anr. vs. Sri Gopal Sheelum Reddy 2018(2) SCC 93.

5. This Court has considered the submissions addressed before this Court.
6. The allegations against the petitioner-Jasbir Singh who was posted as District Incharge, PUNSUP, Jalandhar and petitioner-Yadwinder Singh who was posted as Field officer, PUNSUP, are that they in connivance with other officials were responsible for causing shortage in stocks of wheat bags stored in godowns of PUNSUP. The documents sought to be produced, at the stage of consideration as regards framing of charges, are in the nature of reports of two inquiries conducted by police officers and copies of two letters exchanged between officers of Vigilance Bureau.
7. The legal position, with regard to production of documents at the stage of considering framing of charges has been set at rest by a Division Bench comprising three Judges of Hon'ble Supreme Court in State of Orissa vs. Debendra Nath Padhi 2005(1) SCC 568, to which this very specific question had been referred to for adjudication. The relevant extracts are reproduced herein under:

- “1. Can the trial court at the time of framing of charge consider material filed by the accused, is the point for determination in these matters.

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17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions

being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. **If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge.** That would defeat the object of the Code. **It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth.** The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression “hearing the submissions of the accused” cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. **At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.”**

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23. **As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material.** *Satish Mehra's* case holding that the trial

court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.

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29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice **the High Court can make such orders as may be necessary to prevent abuse of the process of any Court** or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case.”

8. This Court in Gopi Chand vs. Davender Mangla 2006(4) RCR(Criminal) 320, where an accused had produced certain documents in his favour at the stage of consideration of charge and the trial Court discharged such accused on the basis of such documents, set aside that order of discharge while relying upon Debendra Nath Padhi's case (supra) and held that the accused has no right to produce any material. V.K.Mehta vs.of Haryana 2005(3) RCR 753 is another judgment wherein also under similar circumstances, this Court, while relying upon Debendra Nath Padhi's case (supra), set aside an order of discharge passed by trial Court on the basis of documents produced at the stage of considering charges. Hon'ble Apex Court in Suresh Kumar Tekriwal vs. State of Jharkhand 2005(12) SCC 278, also took a similar view relying upon Debendra Nath Padhi's case (supra).
9. A different view can be noticed in Rukmini Narvekar vs. Vijaya Satardekar 2008(14) SCC 1. But, interestingly, one of the members of the two Judges Bench had taken a contrary view. The relevant extracts are reproduced herein-under:

“22. Thus in our opinion, while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *D.N. Padhi case*,

there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. **In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.**”

10. The other Member of Hon’ble Bench, however, took a different view, consistent with position of law settled in *Debendra Nath Padhi’s case* (supra).

It was stated as under:

“37. The **larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made.** Incidentally, the very same arguments which have been advanced by Mr Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 CrPC is concerned. However, in paras 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

38. **In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge** and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath Padhi case* by the larger Bench therein to which the very same question had been referred.”

11. As already mentioned above, the above cited judgment is a judgment where divergent views have been taken by both the Members of the Bench. In these

circumstances, the view of one of the members of the Bench which is rather contrary to the view taken by a three Judges Bench will not hold ground. Coming to the other judgment relied upon by the learned counsel for the petitioner, i.e. Nitya Dharamananda alias K. Lenin and Anr. vs. Sri Gopal Sheelum Reddy 2018(2) SCC 93, a perusal of the same would indicate that the said judgment has also been delivered by a two Judges Bench wherein the relevant paragraphs i.e paragraphs 18 and 23 of judgment of three Judges Bench in Debendra Nath Padhi's case (supra) have not been considered.

12. In any case, even if it is accepted that the trial Court, in exceptional circumstances can look into additional documents at the stage of considering framing of charges, still this Court does not find any such material in the present case, justifying an exception to the settled position of law. The documents sought to be produced are in the nature of reports of two inquiries conducted by police officers and copies of two letters exchanged between officers of Vigilance Bureau. The said inquiry reports of police officers *ipso facto* can neither be made a basis for framing charges or discharging the accused. In case some contrary opinion has been expressed by some police officer, the same cannot be held to be sufficient to entitle the petitioners to discharge. It is the substantive evidence not just the opinion of an officer which would hold the key. The instant case is case based on deficiency in stock of wheat bags which was noticed during surprise checking and which is a matter of record. As held in Debendra Nath Padhi's case (supra), the trial Court is not expected to embark upon a mini trial at the stage of framing of charges.

13. In view of the discussion made above, this Court does not find any infirmity in the impugned order and the same is hereby affirmed. Finding no merit in the present petition, the same is hereby dismissed.

2.6.2023
Pankaj/kamal

(Gurvinder Singh Gill)
Judge

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