

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

269

CRR-690-2018 (O&M)

Date of Decision: 31.08.2023

HITESH RANA

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Lakshay Goel, Advocate and
Mr. Naveen Kundu, Advocate for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

Mr. Navmohit Singh, Advocate
for the complainant.

HARNARESH SINGH GILL, J.(Oral)

Challenge in the present revision is to the order dated 10.01.2018 passed by the learned Additional Sessions Judge, Karnal, vide which the charges under Sections 323, 307, 452, 387, 506 IPC have been framed against the petitioner.

2. Learned counsel for the petitioner submits that there is no documentary/medical record available on record to substantiate the injuries attracting Section 307 IPC and therefore, no case under Section 307 IPC is made out against the petitioner. It is further submitted that as per the medical report dated 27.09.2017 (Annexure P-5), Dr. Piyush Gupta has opined as under:-

'As per details of MLR No.PG/444/17 and the discharge summary dated 27.09.2017 countersigned by me, the injuries in MLR are simple in nature. The possibility of injuries No.1, 2 and 4 to be self inflicted/use of friendly hand cannot be ruled out'

3. Learned counsel for the petitioner further submits that the allegations against the petitioner are that he had given knife blows on the right hand, right shoulder of complainant, namely, Deepika and cut the veins of her right hand and further strangled her neck with the hands. He, thus, argues that the learned trial Court below, while framing the charges, did not take into consideration the said factual aspect of the matter and arbitrarily framed the charges against the petitioner.

4. On the other hand, learned State counsel submits that challan in the present case was presented way back on 06.11.2017; that the charges were framed on 10.01.2018 and that out of total 17 prosecution witnesses, 5 have already been examined.

5. Learned counsel for the complainant submits that once the charges are framed, the Revisional Court has limited jurisdiction to interfere with the order framing of the charges. In support of his contentions, learned counsel for the complainant relies upon the judgment delivered by the Hon'ble Supreme Court in State of Rajasthan Vs. Fatehkaran Mehdu, 2017(2) RCR (Criminal) 1.

6. I have heard the learned counsel for the parties.

7. It is settled law that at the time of framing of charge, the Court has to see whether or not a prima facie case is made out against the accused person(s). Therefore, the arguments of learned counsel for the petitioner, cannot be appreciated at this stage for the reason that at the time of framing of charge, the degree of belief is only presumption. The word 'presuming', must be read ejusdem generis to the opinion that there is a ground for forming an opinion that the accused person(s) has

committed the alleged offence(s). It would also be immaterial whether the said opinion has been formed either on the basis of direct, or circumstantial evidence.

8. The Hon'ble Supreme Court in State of Rajasthan Vs. Fatehkaran Mehdu, 2017(2) RCR (Criminal) 1, has held as under:

'27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

*28. It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander and Another**, 2012 (4) RCR (Criminal) 377: 2012 (4) Recent Apex Judgments (R.A.J.) 509: (2012) 9 SCC 460, where scope of Section 397 Cr.P.C., have been succinctly considered and explained. Para 12 and 13 are as follows:*

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous,

there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.”

“13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the [CrPC](#).”

“29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under [Section 397](#) particularly in context of quashing of charge framed under [Section 228](#) Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., [Section 397](#) and [Section 482](#) of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At

best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under [Section 397](#) or [Section 482](#) of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under [Section 482](#) of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of [Section 228](#) of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted herewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court

is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

30. Applying the above tests, we are of the considered opinion that High Court erred in quashing the charges framed by the order dated 05.05.2009. In result, both the appeals are allowed. The order of the High Court is set aside and the order dated 05.05.2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously.”

9. It could not be pointed out by the learned counsel for the petitioner that while framing the charge there was not even a prima facie case made out against the petitioner. As noticed above, there was sufficient material on record to frame the charges and mere framing of the charges does not establish the guilt on the part of the petitioner as the same shall be determined on the basis of the evidence led.

10. In view of the above, I find no merit in the present petition.

Dismissed.

31.08.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*