

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

**CRM-M-31678-2019 (O&M)
Date of decision : 01.09.2023**

Sumit Yadav and others

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. R.K. Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Prayer is for quashing of the order dated 6th of June, 2017 (Annexure P-5) passed by Judicial Magistrate 1st Class, Rohtak whereby the petitioners have been charged for offences punishable under Sections 419, 420 IPC pursuant to FIR No.244, dated 21st of March, 2016 registered for the offences punishable under Sections 419, 420, 120-B IPC, at Police Station PGIMS, Rohtak and the order dated 13th of December, 2018 passed by the Revisional Court affirming the same.

2. The petitioners are qualified doctors who were serving as House Surgeons after having completed their MBBS with PGIMS, Rohtak. An FIR came into being on the basis of an anonymous complaint. The same reads as under :

“An anonymous complaint was received in which names of 11 hours surgeons were mentioned regarding impersonation by house surgeons during duties in various departments. The matter has been enquired by the Addl. Chief Vigilance Officer PGIMS Rohtak and following blood details are concluded by the Additional CVO against Dr. Somvir son of Sh. Jaipal resident of VPO Dadli Distt. Jhajjar, Haryana. Dr. Hitesh Yadav son of Sh. Birender Singh resident of H.No.129-D, Mayur, Vihar Rewari Dr. Kapil Kumar son of Sh. Mem Chand Sharma, resident of MCF 122/A Raja Nahar Singh Colony, Opp. Sector 1, Ballabgarh, Faridabad Haryana and Dr. Sunil son of Sh Rattan Kumar, P-7,8 Old Court Road Gandhi Chowk Model Town Rewari Haryana. 1. The Above stated doctors have not performed their duties as house surgeons. 2. They have received their salary in their account despite the fact that they have not performed any part of their assigned duties thus done a financial fraud and loss to the public exchequer for the reason best known to them as they have not reported into the office of Additional CVO during the enquiry. The matter was placed before the authorities and along with other actions, it has also been approved that a complaint may also be lodged in the police department. Therefore, you are requested to register complaint against all the above stated doctors under intimation to this office sd/- Dy. Medical Superintendent. For Medical Superintendent.”

3. Apart from the anonymous complaint the other evidence with the Prosecution Agency is in form of the alleged preliminary inquiry conducted by Addl. Chief Vigilance Officer, PGIMS, Rohtak.

4. Counsel for the petitioners has submitted that even if the aforesaid inquiry is taken on its face-value the same does not indict the petitioners. The only conclusion that the inquiry has recorded is that the petitioners received their salaries in their account without

performing their duty. It has been claimed that the aforesaid indiction does not in any way constitute offence defined under Section 415 and 416 IPC to charge the petitioners for offence punishable under Sections 419, 420, 120-B IPC. It has been further contended that in the revisional jurisdiction the persons who were accused of personating the petitioners already stand discharged while returning the finding that the evidence *qua* them was not sufficient to charge them but *qua* the same evidence the petitioners have been charged.

5. I have heard counsel for the parties and have gone through records of the case.

6. Trial Court while Charging the petitioners in the present case passed the following order :

“Arguments heard on charge. On perusal of contents on challan report, in my opinion, a prima-facie case for commission of offence punishable under Sections 419, 420 of IPC has been made out against the accused. Charge-sheet served upon the accused accordingly to which they pleaded not guilty and claimed trial. Now, to come upon 30-8-17 for prosecution evidence. All the unexamined Pws be summoned for the date fixed.”

7. Vide aforesaid order dated 6th of June, 2017 in all seven persons including the petitioners were charged of offence punishable under Sections 419 and 420 IPC. Revision preferred by one of the accused namely Vipin Parkash stands allowed observing as under :

“6. Having regard to the totality of the facts and circumstances, it is observed that the only material against the revisionist is the disclosure statement of Dr. Hitesh Yadav. A disclosure statement of a co-accused is not cogent evidence against another accused. In the instant case, the prosecution concedes that aside from the disclosure statement attributed to Dr.Hitesh Yadav, there is no documentary evidence available against the revisionist. The learned Trial Court has not furnished detailed reasons for charge sheeting the revisionist, who has been charge sheeted for the commission of the offences punishable under Sections 419/420/120 IPC alongwith the other co-accused.

In view of foregoing discussion, the impugned order suffers from the fallacy that it is not reasoned and no cogent material is available on record to make out a prima facie case against the revisionist under any of these provisions. Therefore, the impugned order qua the revisionist is liable to be set aside.

7. No other point has been argued.

8. Resultantly, the revision petition is allowed and the impugned order dated June 6, 2017 qua the revisionist is set aside forthwith. The learned Trial Court is directed to pass an appropriate order in the light of the foregoing discussion. A copy of this order alongwith Lower Court Record be returned. Consign the revision file to records.

8. In the revision preferred by the other six petitioners impugned order has been passed whereby Dr. Prahlad and Dr. Pankaj Saini two of the six revisionists stand discharged whereas the order has been maintained qua four of the accused who are petitioners in the present case observing as under :

“6. Having regard to the totality of the facts and

circumstances, it is observed that the only material on record against the revisionists No.1 to 4 is the enquiry report made by the PGIMS. As per learned counsel, the enquiry proceedings have not been properly conducted at this stage. This Court cannot go into the question of validity of the said report at this juncture. Aside from the disclosure statements of co-accused-Dr.Ombir and Dr.Sumit Kumar, there is no material against revisionists-Dr.Prahlad and Dr.Pankaj Saini. Be that as it may, prima facie there is a document holding the revisionists No.1 to 4 guilty for taking salary without doing the work. It was pointed out by the learned counsel for the revisionists that this is not sufficient to result in their conviction. The question of conviction cannot be gone into at this stage and shall be considered by the learned trial Court at the appropriate time. Needless to state here that at that stage it is not a prima facie case which shall be seen, but the merits of each document shall be considered. This order shall have no bearing on the merits of the case.

There is no infirmity in the impugned order qua revisionists No.1 to 4 and the same cannot be interfered with. The only material against revisionists No.5 & 6-Dr.Prahlad and Dr.Pankaj Saini is that revisionists-Dr.Sumit and Dr.Ombir had made disclosure statements that they had substituted their duties. There is no other material against the revisionists No.5 & 6 aside from these disclosure statements and therefore, the impugned order qua them cannot be sustained.”

9. Trite it is that the order for framing of charge is not an empty or a routine formality. It has far reaching implications. Apex Court in the case of **State through Deputy Superintendent of Police vs. R. Soundirarasu etc. (2023) 6 SCC 768** while explaining the relevant considerations for the Court at the stage of charge held as under :

“55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in *Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561*, and referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659*, and the *State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338*, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

"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."

56. Then again in the case of Som Nath Thapa (supra), a three-Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 reply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 reply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the

question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

"32...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."

57. In a later decision in Mohanlal Soni (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7)

"7. The crystallised 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."

58. Reiterating a similar view in *Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another*, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the

accused. It was held that the Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

59. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that 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 offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

60. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge

under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : *V.C. Shukla v. State through CBI, AIR 1980 SC 962*).

10. Division Bench of this Court in judgment passed **CRA-D-212 of 2022** titled as **Jagtar Singh Johal @ Jaggi versus National Investigation Agency and Another**, dated 19th of April, 2022, after analyzing the law on the point held as under :

“15. Thus, at the time of framing of charge, the law prescribes test of 'prima facie case' which shall connote that at the time of framing of charge, the probative value of the material on record is not to be gone into. On the basis of material, Court is required to record satisfaction that the commission of offence by the accused was possible. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or not.....”

11. In the light of the aforesaid law does the question arises is : *'whether the evidence can be said to be sufficient to charge the petitioners for offences punishable under Sections 419 and 420 IPC or not ?'*

12. As already mentioned hereinabove the prosecution is based upon an anonymous complaint and the only other evidence which is claimed to have indicted the petitioner is the inquiry conducted by the

authorities which as per prosecution concluded that the petitioners are the beneficiary of the salary without doing their work. *Qua* co-accused the Revisional Court found the evidence to be discrepant. Thus, the question is: *'even if the evidence on record in form of inquiry conducted by Vigilance Officer is taken to be gospel truth can it drive-home the guilt of the petitioners to charge them for the offences punishable under Sections 419, 420 IPC?'*

13. Even the inquiry report does not say that the petitioners fraudulently or dishonestly induced delivery of property. The offence of cheating by personation already stands weeded out in view of the fact that the alleged personators stand discharged. Thus, payment of salary without work may constitute a misconduct under relevant service rules, but in the absence of any attribution that the petitioners fraudulently or dishonestly induced the employer to deliver the salary, the order of charge against the petitioners casually passed by the Trial Court cannot be sustained.

14. Once the Court itself found that the inquiry report was discrepant and cannot be read to make out more than *prima face* case *qua* revisionist Nos.5 and 6, this Court fails to understand as to how the same document can be held to make out a more than *prima facie* case against the petitioners when both sets of accused have been charged for the same offence. From the record of the case it is evident

that the Revisional Court erred in law in treating the petitioners differently *viz-a-viz* two other accused.

15. In view of above finding that the petitioners stand at par with revisionists No.5 and 6, the impugned order *qua* dismissing the revision petition of the petitioners is hereby set aside. The reasoning recorded *qua* revisionists No.5 and 6 shall hold good for the petitioners as well.

16. Resultantly, the petitioners are ordered to be discharged.

17. Petition stands allowed accordingly.

September 01, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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