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

CRR-1743-2023 (O&M)**Date of decision: 03.08.2023**

Bhupinder Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sunil K. Chaudhary, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Additional A.G., Haryana.

ARUN MONGA, J. (ORAL)

Instant Revision petition has been filed by petitioner against the order dated 02.06.2023 passed by learned Judicial Magistrate First Class, Ambala whereby discharge application moved by the petitioner in FIR No.216 dated 29.06.2018 of Police Station Ambala City was dismissed and another order dated 02.06.2023 whereby charges under Sections 420, 120-B, 171, 193 were framed against the petitioner.

2. Succinct facts first as pleaded in the instant petition.

2.1 Petitioner took financial loan from the complainant in the year 2016. Due to family circumstances, he could not repay loan amount to the complainant and cheque issued in favour of the complainant in discharge of liability stood dishonoured. In pursuance to the process issued by learned trial Court, Ambala in private complaint under Section 138 of Negotiable Instruments Act, petitioner appeared before the Court on 31.07.2017 and was released on bail by executing personal bail bonds and co-accused namely Pritam Singh stood as surety for the petitioner. During pendency of complaint under Section 138 of NI Act, complainant filed an application alleging that

petitioner has produced the co-accused Pritam Singh as a surety, who was professional surety and had stood surety in a number of cases. Upon receipt of private complaint/application, Learned District and Sessions Judge, Ambala vide order dated 13.03.2018 directed the police to investigate into it.

2.2 In pursuance to the order, Police investigated and registered FIR No.216 dated 29.06.2018 under Sections 420, 120-B IPC (Sections 177, 193 IPC added later on). Police submitted charge sheet under Section 173 Cr.P.C. Thereafter, petitioner filed application under Section 239 Cr.P.C. before the learned trial Court for discharge as no offence was made out.

2.3 Vide impugned order dated 02.06.2023, learned trial Court dismissed the application for discharge and framed charges under Sections 120-B, 177, 193, 420 IPC by holding that petitioner in conspiracy produced bogus surety who already tendered his surety and property in many other cases.

3. Learned counsel for the petitioner submits that allegations against the accused is that he has produced the co-accused Pritam Singh as surety before the Court who was professional surety. He further submits that Co-accused Pritam Singh is a proclaimed offender while petitioner is appearing regularly before the Court below. The investigating agency has no direct and indirect evidence to prove the involvement of the petitioner as accused in the commission of offence alleged in the FIR. The Investigating Agency did not enquire about the veracity of the allegations of the complainant before registration of FIR against the petitioner. He further submits that punishment for offence giving false evidence in judicial proceedings is stipulated in Sections 193 and 177 IPC and the law governing taking of cognizance of such offences is contained in Section 195 Cr.P.C. He relies on Section 195 of Cr.P.C. in support of his arguments, which reads as under:-

“Sec. 195 Cr.P.C. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence :-

(1) No Court shall take cognizance :-

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of, attempt to commit such offence, or

(iii) of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, Section 193 to 196 (both inclusive) and 228, when such offence is alleged to have committed in, or in relation to, any proceedings in any court, or

(ii) of any offence describe in section 463, or punishable under section 471, section 475 or section 476, of the said code, when such offence is alleged to have committed in respect of a document produced or given in evidence in a proceeding in any court, or

iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub clause (ii), (except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf, or of some other court to which that court is subordinate.

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.”

4. On advance service, learned State counsel appears and opposes the prayer made. She submits that while framing charge in a case instituted on police report, only prima facie case is to be seen and in the instant case learned Magistrate upon considering report and the documents sent with it under

Section 173 Cr.P.C. rightly came to the conclusion that there is ground for presuming that the petitioner has committed his offences for which he was charge-sheeted.

5. I have heard the learned counsel for parties and gone through the case file.

6. Order dated 02.06.2023, passed by learned Judicial Magistrate First Class, Ambala, dismissing discharge application moved by the petitioner, assailed herein, is premised, *inter alia*, on the following reasoning:

“5. In the present case, the accused produced a surety, who was found bogus as he already tendered his surety and property in many other cases. There are allegations that accused Bhupinder Singh produced him in conspiracy with him and the challan was filed under sections 420, 120-B, 177, 193 of IPC. Accused Pritam Singh has already been declared proclaimed person and without evidence, it can not be said that there was no criminal conspiracy between accused Bhupinder Singh and Pritam Singh. Learned counsel for applicant submitted that applicant did not commit even a single default after getting bail in a complaint case but this is not a ground to discharge him under the allegations of conspiracy. Therefore, keeping in view of discussion above, application in hand stands dismissed.

6. However nothing in this order shall have any bearing the merits of the case.”

7. As far as Sections 177 and 193 IPC are concerned, there is force in the arguments of learned counsel for petitioner that Section 195 Cr.P.C. mandates a clear bar on taking of cognizance by a court, of offences punishable under Sections 177 and 193 IPC, unless it is on a complaint in writing of the public servant concerned/Court or of a superior public servant/Court, such officer of the Court as the Court may authorize in writing in that behalf. Since no such complaint has been made by concerned public servant/Court in writing, cognizance of Sections 177 and 193 IPC cannot be taken.

8. As regards the other offences under Sections 120-B, 420 IPC are concerned, it is settled position in law that at the stage of framing charge, Court has power to sift the grain from chaff and weigh evidence for the limited

purpose of finding out whether or not a *prima facie* case against the accused has been made out. When the material placed before the Court discloses suspicion against the accused, which has not been properly explained the court will be justified in framing charge. At that stage, no roving inquiry into the pros and cons of the matter is to be carried out and evidence is not to be weighed as if a trial was being conducted. If on the basis of material on record, a Court could come to the conclusion that commission of offence is a probable consequence, a case of framing of charge exists.

9. To put it differently, if the Courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance of golden scales whether the facts, if proved, would be incompatible with the innocence of the accused or not.

10. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 239 or Section 240 of the Cr.P.C. At the initial stage, it is to be seen if there is a suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence. If so, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal case instituted on a

police report, the Court is not to apply exactly the same standard and test which it applies for finally determining the guilt or otherwise.

11. What is required to be seen is whether there is strong suspicion which may lead the Court to think that there is ground for presuming that the accused has committed an offence. Reference may be had to the law laid down by the Apex Court in “*Union of India vs. Prafulla Kumar*”¹,

12 In the instant case, learned trial Court while passing the order for framing of charge to the extent of Sections 420 and 120-B IPC has rightly observed that from the totality of facts and circumstances *prima facie* case is made out against the petitioner/accused.

13. As an upshot, I find no infirmity in the impugned order dated 02.06.2023 only qua offences under Sections 420 and 120-B IPC and the same is, therefore, upheld. However, impugned order is set aside with regard to framing of charges under Sections 193 and 177 IPC.

14. Disposed of accordingly.

15. In the parting, I may hasten to add that with regard to Sections 177 and 193 IPC, the competent authority is at liberty to move complaint in accordance with law, if so advised.

16. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

03.08.2023
vandana

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

¹AIR 1979 Supreme Court 366.