

CRR No.1230 of 2021 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRR No.1230 of 2021
Date of Decision:25.04.2023.

Jagwinder Singh @ Pammi

....Petitioner

Versus

State of Punjab through SSP

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. M.S. Saini, Advocate
for the petitioner.

Mr. Ravinder Singh, A.A.G., Punjab.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition assails the order dated 13.09.2021, vide which charges were framed against the present petitioner under Section 419, 420, 465 read with Section 120-B of the Indian Penal Code, 1860 (for short 'the IPC'), 467 read with Section 120-B IPC, 468 read with Section 120-B IPC, 471 read with Section 120-B IPC, 201, 212 and 216 IPC.

2. The facts as emanating from the paper-book are that Sushila Sharma and Kamla Sharma, both residents of Delhi submitted a complaint dated 03.10.2020 to the Station House Officer, Police Station Chamkaur Sahib, Rupnagar (Punjab), on the basis of which FIR No.172 dated 24.10.2020 was registered under Section 419, 460, 465, 468, 471, 120-B IPC, at Police Station, Chamkaur Sahib, District Rupnagar against Gurcharan Singh S/o Sh. Atma Singh, Chand Kumar S/o Sh. Sham Lal, Harish Kumar S/o Kapur Chand and Sukhwinder Singh S/o Hazura Singh. In the complaint, apart from these four, other persons namely Guddi D/o Chand Kumar, Shiv Kumar S/o Late Sh. Sham Lal, Raghu Raja

S/o Late Sh. Sham Lal and Mandeep Moudgill, Advocate, District Court,

Rupnagar and Paramjit Singh Kheri, Advocate, District Court, Rupnagar, were also named. The complainants Sushila Sharma and Kamla Sharma were real sisters. They had three brothers namely Vijay Sharma, R.C. Sharma and Satyapal Sharma and one more sister apart from the complainants namely Smt. Shakuntala. All three brothers had expired. The complainant sisters were owners of ancestral agricultural land measuring 3.50 acres (hereinafter referred to as 'the disputed land') situated in Village Jidanpur, Tehsil and District Chamkaur Sahib. In July 2020, summons were received from the Court of Additional Civil Judge (Sr. Division), Rupnagar by a deceased brother's wife in a case titled as 'Chand Kumar Vs. Satya Pal Sharma and others'. Reference to some other cases was also made in the complaints. The basic allegation was that the accused-Chand Kumar had filed several suits against the deceased brothers of the complainant sisters and without disclosing the factum of their death, had obtained *ex parte* decrees. It was also alleged that the accused, in conspiracy with each other had sold the disputed land after entering into an agreement to sell with one Sumit Sood and received ₹ 45,00,000/- on behalf of the complainant sisters without their knowledge or consent and handed over the possession of the disputed land to the said Sumit Sood. Many other suits had been filed at the instance of the accused-Chand Kumar. Reference to many such suits was given in the FIR. The FIR was registered and it was found by the police that the signatures of the complainant sisters had been forged at many places including in civil suits and sale deed. Subsequently, one-Anil Joshi and the present petitioner were also nominated as accused on 26.11.2020, as they were found to have helped accused-Gurcharan Singh and had been hidden by them with a view to evade arrest. They were, therefore, arrayed as accused under Section 212 and 216 IPC. Anil Joshi was subsequently found to be innocent and his name was removed from the array of

accused. After the submission of the final report, charges were framed vide order dated 13.09.2021. Aggrieved by this order, the present petition was preferred.

3. Short reply by way of an affidavit of Sh. Rajesh Kumar Kaplish, PPS, Deputy Superintendent of Police, Sub-Division Sri Chamkaur Sahib, District Rupnagar, was filed on behalf of the respondent-State of Punjab, defending the impugned order.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner submits that the impugned order is not sustainable qua the present petitioner, because even as per the case of the Investigating Agency, the only allegation against the petitioner was that he had harboured one of the accused-Gurcharan Singh. It has been submitted that he was never named in the FIR and, therefore, charges could not have been framed against him for the main offences. It has also been submitted that even charges under Section 212 and 216 IPC are not made out against the present petitioner.

6. On the other hand learned counsel representing the State of Punjab has submitted that there is no infirmity and illegality in the impugned order. Learned counsel could, however not deny or dispute that the petitioner was not named originally in the FIR and the only role attributed to him was that of harbouring accused-Gurcharan Singh.

7. I have considered the submissions made by the learned counsel for the parties.

8. A bare perusal of the documents produced on the record shows that originally, nine persons were named in the FIR. However, the FIR was registered against four persons namely Gurcharan Singh, Chand Kumar, Harish Kumar and Sukhjinder Singh. After the arrest of accused-Gurcharan Singh on 23.11.2020, he disclosed to the police that after the registration of the case, when he was hiding

from the police, he met one Anil Joshi, resident of House No.313, Ward No.6, Sugar Mill Road, Morinda and the present petitioner-Jagwinder Singh and that Jagwinder Singh had given him shelter at his motor at Kurali-Morinda road. Under the circumstances, on 26.11.2020, offences under Section 212 and 216 IPC were added. However, on an inquiry conducted by the Senior Superintendent of Police, Rupnagar, Anil Joshi was declared to be innocent and charge-sheet against other accused was presented. The charge-sheet is on record as Annexure P-1 and all these facts are duly mentioned therein.

9. The trial Court, by way of the impugned order, framed charges against all accused under all offences, as has been mentioned in the opening part of the judgment.

10. A bare perusal of the impugned order shows that the same has been passed mechanically. No doubt, at the stage of framing of charges, the Court is not expected to delve deep into the matter and it is not expected to come to a conclusion as to whether material brought by the prosecution was sufficient for the purposes of conviction or not but at the same time, the trial Court cannot also be simply a mechanical agency to accept whatever the Investigating Agency presents to it.

11. Admittedly, the petitioner was not named originally in the FIR. The only role attributed to him is that he had harboured accused-Gurcharan Singh. Under the circumstances, there was no occasion for the trial Court to charge-sheet the present petitioner under Section 419, 420, 465, 467, 468, 471, 120-B, 201 IPC. Insofar as offences punishable under Section 212 and 216 IPC, are concerned, Section 212 IPC lays down as under:-

“212. Harbouring offender.—Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal

punishment; if a capital offence.—shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; if punishable with imprisonment for life, or with imprisonment.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both. “Offence” in this section includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.”

Section 216 IPC lays down as under:-

“216. Harboursing offender who has escaped from custody or whose apprehension has been ordered.—Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody; or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following that is to say,— if a capital offence.—if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life, or with imprisonment.—if the offence is punishable with imprisonment for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both. “Offence” in this section includes also

any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.”

A perusal of the aforesaid provisions would show that at best, the petitioner could be charged under Section 212 IPC and 216 (part ii) IPC. The mere fact that the accused-Anil Joshi was found to be innocent, would not mean that the petitioner could not have been named as an accused. Whether the petitioner is innocent or not would be determined at the stage of trial. It is, therefore, clear that the petitioner could at best have been charge-sheeted under Section 212 and 216 IPC and charge-sheeting him for the commission of remaining offences, is totally illegal and arbitrary.

12. Vide order dated 25.10.2021, trial proceedings *qua* the present petitioner had been stayed.

13. In view of the aforementioned facts and circumstances, the present revision petition is partly allowed and the impugned order to the extent of charge-sheeting the petitioner under 419, 420, 465, 467, 468, 471, 120-B, 201, IPC, is set aside. The trial Court is accordingly directed to pass a fresh order framing/altering charge against the present petitioner. The petitioner may appear before the trial Court on or before 10.05.2023 for further proceedings.

April 25th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

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