

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

106

CRR-1794-2023 (O&M)
Date of decision : 08.08.2023

Jaivir @ Pappu @ Jaibir

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Keshav Partap Singh, Advocate for the petitioner

AMAN CHAUDHARY, J.

CRM-32857-2023

For the reasons stated in the application, the same is allowed. Delay of 410 days is hereby condoned.

CRM-32858-2023

For the reasons mentioned in the application, the same is allowed. Annexures P/1 to P/5 are taken on record, subject to all just exceptions.

CRR-1794-2023

1. Prayer in the present revision petition is for setting aside the order dated 23.03.2022 passed by Sessions Judge, Faridabad, vide which the petitioner has been charge sheeted under Sections 148, 149, 323, 326, 307, 506, 120-B IPC to face trial.

2. The genesis of the case as per the FIR registered on the complaint made by one Ajay, is that on 20.08.2020 at about 7:00 pm, when he alongwith his friend Surrender, was present near Dharam Kanta in the village, 7 accused named alongwith 10/12 others came in a white-coloured Swift car as well as on 4-5 motorcycles and while abusing them, opened indiscriminate fire from their pistols,

which went past chest and feet of the complainant. On trying to escape towards PWD road, Pyale, they continued firing at him from behind and thereafter, they encircled him near the fields and attacked him with lathis, dandas, sarias and gave blows on his feet, as also fired shots at him with country made pistols, which crossed after touching him, due to which he received injuries. 10/12 shots were fired at him. On he having raised an alarm, 'bachao-bachao', the accused stated that they would finish him off today and they had been sent by Jaibir @ Pappu Yadav with a plan and that he cannot hurt/ruin him. When they were beating him, they saw some people coming from the village and fled presuming him to be dead. This attack has been done due to a grudge regarding an incident that took place one month prior to the quarrel. On account of which many times, the accused persons had stopped his way and had given threats to kill. The aforesaid accused are goons type persons. He was rushed to Sarvodaya Hospital and Research Centre, Faridabad and as per MLR, the following injuries were found:

“INJURY-

1. SWELLING, DEFORMITY AND CLW AROUND 4X3X3 CM OVER RT LEG LOWER
2. PUNCTURE WOUND OVER LT LEFT LEG.
3. CRUSH INJURY OVER LT FOOT.
4. SWELLING AND DEFORMITY OVER LT FOREARM

OPINION -ORTHO OPINION

Provisional Diagnosis: A/H/O GUN SHOT ?FRACTURE OVER RT LEG AND LEFT FOREARM”

3. Learned counsel contends that the petitioner has been falsely implicated in the case. The trial Court has wrongly and illegally framed charges against him, as he has been roped in on the oral allegations levelled by the complainant, since no gun shot injury was attributed to him. Despite the fact that he was not present at the spot when the occurrence took place, he has been charge-sheeted for offences under Sections 148, 323/149, 326/149, 307/149, 506/149, 120B IPC. Furthermore, no prima facie case under Sections 326, 307 is made out

against him from a bare reading of the MLR and opinion of the doctors. The petitioner was not a part of the unlawful assembly, thus no offence under Section 148,149, 323 read with Section 149, 326 read with Section 149, 307 read with Section 149 and 506 read with Section 149 is made out against him.

4. On receipt of advance notice, Mr.Jagdish Manchanda, Additional Advocate General, Haryana puts in appearance and combating the submissions made on behalf of the petitioner submits that the petitioner, being the master mind, as he was having a grudge against the complainant, conspired with the co-accused and planned the attack, which was executed by his co-accused on his behalf, thus, was liable for the offences, for which he has been charge sheeted. There is sufficient evidence available against him. Moreso, even his petition for grant of anticipatory bail was dismissed by this Court vide order dated 25.03.2021, on the ground that he cannot take advantage of the fact that the complainant had not suffered any bullet injury. It was observed in the order that if the complainant had a miraculous escape from being hit by bullets, no benefit by default can be extended to the accused-petitioner. As per the investigation carried out, live cartridge and empty shell were recovered from the spot, but if no shots were fired from the pistols, then the question of these having been found there, would not have even arisen. The petitioner is in effect seeking his discharge under Section 227 CrPC, which could have been only before framing of charge and not thereafter. The application filed by the petitioner was thus rightly dismissed by the trial Court. He relies on **Ratilal Bhanji vs. State of Maharashtra**, (1979) 2 SCC 179.

5. Heard the learned counsel for the parties.

6. The investigation in the FIR having been carried out led to filing of the final report under Section 173 CrPC. After one year of framing of charge, on

23.03.2022, the petitioner had filed an application for alteration/ modification of the charge on 14.03.2023. Presently, the case is listed for prosecution evidence.

7. In **V.C. Shukla vs. State through CBI**, 1980 Supp SCC 92 , Hon'ble The Supreme Court observed that the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

8. As was observed by Hon'ble The Supreme Court in **State of NCT of Delhi and others vs. Shiv Charan Bansal and others** (2020) 2 SCC 290, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if the trial is being conducted. Thus, to hold that at the stage of framing the charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure. It is not a stage at which the final test of guilt is to be applied. [See **State of Rajasthan vs. Fatehkaran Mehdu**, (2017) 3 SCC 198].

9. The Court at the stage of framing of charges, has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not. [See **State of Madhya Pradesh vs. Deepak**, (2019) 13 SCC 62 and **Amit Kapoor vs. Ramesh Chander** (2012) 9 SCC 460 and **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)** (2009) 16 SCC 605].

10. At the stage of framing of charge the trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the

Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that *prima facie* case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. or a revision Petition under Section 397 read with Section 401 of Cr.P.C. seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [See **Manendra Prasad Tiwari vs. Amit Kumar Tiwari**, 2022 SCC OnLine SC 1057 and **State of Orissa vs. Debendra Nath Padhi** (2005) 1 SCC 568 and **State of Delhi vs. Gyan Devi and Others** (2000) 8 SCC 239].

11. At the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence then the Court should proceed with the trial, was laid down by Hon'ble The Supreme Court in **State of Bihar vs. Ramesh Singh** 1977 SCC (Cri.) 533 and followed in **Union of India vs. Prafulla Kumar Samal and others** 1979 SCC

(Cri.) 609. Delineating the scope of power of the Court in respect of the framing of charges Hon'ble The Supreme Court in **Dipakbhai Jagdishchandra Patel vs. State of Gujarat**, (2019) 16 SCC 547 observed that, "We may profitably, in this regard, refer to the judgment of this Court in *State of Bihar v. Ramesh Singh* wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

"4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight 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 whether the facts, if proved, would be incompatible with the innocence of the accused or not. 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 the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial."

12. The trial Court has vide order dated 17.07.2023 dismissed the application filed by the petitioner seeking alteration/modification of charge, relevant para of which reads thus:

"On the basis of the final report filed under Section 173 Cr.P.C. my learned predecessor has framed the charge against the accused on 23.03.2022 and the counsel for the applicant/accused has specifically pointed out that the concerned doctor has not found any injury of gunshot. In the opinion of the court, until and unless the concerned doctor is examined, this court cannot rely upon the opinion at this stage. It is also a subject matter of evidence whether the present applicant/accused was present at the spot at the time of incident or not. If anything comes in evidence then the applicant/accused is at a free will to move the present application for alteration of charge depending upon the

evidence available on the file but at this stage, permission to amend the charge cannot be allowed. Finding no merit in the present application, same is hereby dismissed.”

13. The purpose of Section 216 Cr.P.C. is to have such an addition and alteration in furtherance of a trial and not such an addition or alteration which would negate the further trial. Therefore, by no stretch of imagination, it can be said that the alteration would include deletion or erasing of charge which would negate the further trial. Of course, it is left to the accused to prove that certain charge has not been proved. It can be done at the time of the trial by destroying the prosecution witnesses by cross-examination or letting in any defence evidence to nullify the probative value of the prosecution evidence or the accused may even rely on the admission made by the State, but the accused/petitioner herein cannot seek for the deletion of a charge in the guise of alteration which would negate the trial so far as that charge is concerned.[See **Selvi J. Jayalalitha vs. Additional Superintendent of Police**, 2000 SCC OnLine Mad 1111]

14. In **Ratilal Bhanji** (supra), the Hon’ble Apex Court has observed that, once a charge is framed, the Magistrate has no power by any provision of the Code to cancel the charge and revise the proceeding to discharge the accused. It is thus evident that once a charge is framed, the natural course is to proceed with the trial and conclude the same by pronouncement of judgment either holding that the accused guilty or acquitting him.

15. It was held in **Devender Pal Singh vs. State (NCT of Delhi)** (2002) 5 SCC 234, by Hon’ble The Supreme Court that, “...Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence...” Its existence is a matter of inference, normally deduced from acts of parties in pursuance of purpose in common between the conspirators was the observation by Hon’ble The Supreme Court in

State of Kerala vs. P. Suhagathan & Another, (2000) 8 SCC 203. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial Court was held in **Yashpal Mittal vs. State of Punjab** (1977) 4 SCC 540 by Hon'ble The Supreme Court.

16. Taking part in conspiracy with the end in view and planning of crime would make an accused equally liable along with the co-accused, who may have actually committed the offence and does not absolve him of the criminal liability. The charge does not connote the plurality of objects of conspiracy.

17. In the case of **Rajiv Sharma vs. State of Himachal Pradesh**, 2017(6) ILR (H.P.) 498, the High Court upheld the order of the trial Court, whereby charges were framed under Sections 307 and 120B IPC against the petitioner, who had contended no conspiratorial role vis-a-vis the offences committed by the principal accused, by observing that the submissions were not acceptable, "... (i) as the role of a conspirator is always hidden besides remains camouflaged, (ii) thereupon when besides when, hence it may not have been possible, for the complainant to be aware qua the conspiratorial role of the accused, in the offence, alleged vis-à-vis the principal accused, more especially, in contemporaneity of lodging of the FIR, (iii) rather unfoldment(s) thereof, emanating upon the Investigating Officer, during, his holding investigation(s) making disinterrings thereof, (iv) whereafter, in, his report furnished before the court concerned, his ascribing on anvil, of, evidence collected by him, the penal misdemeanor(s), of, criminal conspiracy(s) vis-à-vis the petitioner herein, (v) thereupon in the learned Additional Sessions Judge concerned, bearing in mind the aforesaid report AND his proceeding to order, for, framing of the charge against the petitioner herein, for his committing the offences punishable under Section 307 and 120-B IPC, has hence not committed any apparent illegality or

impropriety.”

18. In **Mohan Ram Jat vs. State of Rajasthan**, 2022 SCC OnLine Raj 3180, wherein neither any weapon from the accused nor any empty cartridge of firearm from the place of occurrence were recovered, the trial Court framed charges under Section 307 IPC, the High Court observed that, “The word “presuming” in Section 228 CrPC has been consciously inserted by the legislature, with the intention that if the Court strongly suspects that the accused person(s) is in any way connected with the commission of the alleged offence(s), then it may proceed to frame charges against the accused person(s). The said word 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.” It was held that at the stage of charge, the Court is only required to prima facie presume whether a case against the accused may be made out. The facts may be taken at face value, if they disclose the existence of ingredients constituting the alleged offence, then the charge may be framed.

19. The intention precedes the act attributed to accused, which is to be deduced not merely from the consequences that ensue but the surrounding circumstances, among others, like the nature of the weapons used, the state of mind of the accused, words used by the accused at the time of the incident, motive of the accused, manner of commission of offence, parts of the body where the injury was caused or intended and the nature of injury and severity of the blows inflicted, etc. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. The Court has to see whether the act, irrespective of its outcome, was done with the intention or knowledge. In a case of conspiracy, every

accused may not be even present at the spot however, if there is prima facie material to show meeting of mind and that pursuant thereto, an offence is committed, all the accused would also be liable for commission of the same. In the present case, a perusal of the FIR would reveal that the petitioner Jaibir @ Pappu Yadav, co-accused Sumer, Satpal Singh, Joginder, Karamchand, Narender, Kalu and Sonu were named and there are specific allegations with respect to injuries having been inflicted to the complainant with an intention to kill, with a preconcert of the petitioner, who nursed a grudge against him. The accused persons in order to execute the plan orchestrated by the petitioner, which on previous occasions also was unsuccessfully undertaken, had dawned on the complainant armed with deadly weapons such as country made pistols, sarias, lathis, dandas etc. fired indiscriminately at him and the shots went past his chest and feet. Injuries were admittedly caused to him, as corroborated by the medical. The law contemplates that the act of one of the members in the conspiracy is deemed as the act by each of them, due to all members being equally liable. The said acts done by one person not only include those agreed by all members in the common plan but also include those which became incidental, collateral and necessary to add for the accomplishment of the common purpose.

20. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. [See **State of M.P. vs Kashiram & Ors.** AIR 2009 SC 1642]

21. The trial Court is not expected to decide the credibility and truthfulness of the available material at the stage of charge. The disputed defence of the accused cannot be taken into consideration at this stage. When there is evidence indicating strong suspicion against the accused, the trial court will be justified in framing of charge and granting an opportunity to the prosecution to

bring on record the entire evidence for the purposes of trial. In **Ghulam Hassan Beigh vs. Mohd. Maqbool Magrey**, (2022) 12 SCC 657, Hon'ble The Supreme Court, while relying on **Bhawna Bai vs. Ghanshyam**, (2020) 2 SCC 217, observed that, "... The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution."

22. Hon'ble The Supreme Court in **Rajiv Thapar & others vs. Madan Lal Kapoor** (2013) 3 SCC 330 observed that, "The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in

accordance with law...”

23. The trial Court has rightly dismissed the application of the petitioner and considering the facts and circumstances of the present case, there appear no strong and exceptional reasons, requiring interference therein. The plea of the petitioner is to seek deletion of charges in the garb of application for alteration/amendment of charge. The trial Court having proceeded to frame charge in accordance with the case put up by the prosecution, it would still be open for the accused-petitioner to assert and substantiate his contentions during the course of proceedings. This, essentially, would be the defence in the criminal trial.

24. As a fallout and consequence of the aforesaid discussion, the present petition deserves to be and is accordingly dismissed.

25. The observations made hereinabove are only for the purpose of adjudication of the present petition and shall not be construed as an expression of opinion on the merits of the case.

26. Pending application(s), if any, shall also stand disposed of.

08.08.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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