

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

233.

CRR No.1868 of 2009 (O&M)

Reserved on:13.02.2024

Pronounced on:26.02.2024

Balwan Singh

... Petitioner

Versus

Shyam Lal and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Neha Rana, Advocate for
Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. RPS Jammu, Advocate
for respondent No.1.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. The present petition has been filed under Section 401 Cr. P.C. for setting aside the order dated 04.04.2009 passed by the learned Additional Sessions Judge (I), Jind vide which the revision petition filed by respondent No.1 was allowed and while setting aside the order dated 22.09.2008 passed by the learned Additional Chief Judicial Magistrate, Jind, he was ordered to be discharged, being contrary to law.

2. In brief, the facts are that brother-in-law of the complainant-Balwan Singh had borrowed some amount from one Sham Lal on interest and he stood surety for the same. However, his brother-in-law had died and repayment of the borrowed amount was done by him, being surety. When he approached Sham Lal for rendition of accounts, Sham Lal refused to give details of the accounts. During the course of investigation, it came forth that Sham Lal used to get transfer land in his name before giving loan. A panchayat was convened in which Sham Lal claimed that an

amount of Rs.5 lakhs along with interest was due upto 30.04.2004. When the dispute was not settled amicably, the complainant initially made a complaint to the I.G. Hisar Range where in the presence of the inquiry officer a panchayat was convened on 30.08.2004. However, Sham Lal did not given details of Rs.7 lakhs upto 05.09.2004, rather he started threatening the complainant. In this background, the complainant prayed for taking legal action against Sham Lal.

3. Vide order dated 27.07.2007, the Additional Chief Judicial Magistrate, Jind discharged the accused Sham Lal having found no *prima facie* case against him, however, in the revision petition preferred against the said order, the Revisional Court vide its order dated 27.03.2008 remanded the matter back to the learned Magistrate for considering the matter afresh after reappreciating the facts and evidence. Thereafter, the learned Additional Chief Judicial Magistrate, Jind on re-appreciation of facts and evidence, charged the accused Sham Lal under Sections 406, 420 and 506 IPC vide order dated 22.09.2008. Feeling aggrieved against order dated 22.09.2008, the accused Sham Lal filed the revision petition, which was accepted and he was discharged vide order dated 04.04.2009 passed by the learned Revisional Court. Aggrieved by order dated 04.04.2009, the petitioner-complainant approached this Court by way of instant petition.

4. Learned counsel for the petitioner *inter alia* contends that the learned Revisional Court fell in grave error in reversing the well-reasoned order dated 22.09.2008 passed by the learned Additional Chief Judicial Magistrate, Jind. The learned Revisional Court has not appreciated the evidence and law correctly and moreover, it is a settled law that at the time of framing of charges only *prima facie* evidence is to be considered and a detailed scrutiny of material and evidence is not be ventured into so as to adjudicate its probative value. The learned Revisional Court has erred in considering the report dated 05.11.2004 of Deputy

Superintendent of Police, Jind, which is not a part of the final report and wrongly relied upon it and passed the impugned order by reading the aforesaid report in defence of respondent No.1-accused. Further, the Revisional Court has overlooked the order dated 27.03.2008 passed by the learned Sessions Judge, Jind and the material available on record along with statements of witnesses recorded under Section 161 Cr.P.C.

5. Per contra, learned counsel appearing for respondent No.1 submitted that the learned Revisional Court has passed a well reasoned order and it was well within its right to go to the root of the controversy and therefore, has rightly relied upon the inquiry report of the concerned Deputy Superintendent of Police. The impugned order dated 22.09.2008 was passed by the learned Additional Chief Judicial Magistrate, Jind in a mechanical manner without weighing the material available on record. As such, the order dated 04.04.2009 passed by the learned Revisional Court, which is impugned in the present petition, is based on settled law and facts of the case.

6. Having heard learned counsel for the parties and after perusing the record, this Court finds force in the argument advanced by the counsel appearing for the petitioner. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a prima facie case exists

depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature and judgmental law on this issue, it could be safely concluded that at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C, the learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record if taken at their face value disclose the existence of all the ingredients constituting the offence. The discharge of the accused is only permissible when the case set up by the investigating agency in the final report filed before the trial Court under 173 of Cr.P.C. has no basis or foundation. The trial Court cannot consider the probable defence of the accused in the case at this stage.

7. The Hon'ble Supreme Court has in extenso laid down the principles for the purpose of framing of charges in **P.Vijayan Vs. State of Kerala (2010) SCC 398**. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in State through **Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206** where a two Judge Bench, speaking through Justice J.B. Pardiwala, concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into.

8. The Hon'ble Supreme Court in **State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568** has held that if any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 Cr.P.C. at the initial stage of framing of a charge would not arise since defence of the accused is not

relevant at that stage. Meaning thereby, the accused would not have right to invoke Section 91 Cr.P.C. at the stage of framing of charge.

9. Keeping in view the aforementioned facts and circumstances, the impugned order dated 04.04.2009 is set aside and the instant petition is allowed. However, keeping in view the fact that the matter is pending since 2009, the learned trial Court is directed to conclude the trial proceedings as expeditiously as possible and preferably within a period of six months from the date of receipt of certified copy of this order.

(HARPREET SINGH BRAR)
JUDGE

February 26, 2024
Pankaj*

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