

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

CRR No.4002 of 2016 O&M)
Date of decision : 05.03.2024

JASWANT SINGH @ MADU & ORS

....Petitioners

Versus

GURDEEP KAUR

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

**Present: Mr. Lal Singh Sandhu, Advocate
for the petitioners.**

**Mr. Lakhan Paul Garg, Advocate for
Mr. Jagjit Singh Gill, Advocate
for the respondent.**

PANKAJ JAIN, J. (ORAL)

Present petition is directed against the order dated 28th of September, 2016 passed by JMIC Dabwali whereby the petitioners have been charged for offences punishable under Sections 147, 148, 447 r/w Section 149, 379 r/w Section 149, 506 r/w 149 of the Indian Penal Code and Section 25 of the Arms Act r/w Section 149 IPC.

2. Complaint was preferred by the respondent/complainant against the petitioners alleging that she along with her in-laws are owner in possession of land bearing Khewat No.992, Khatouni No.1585, Murabba No.44, Kila No.12/1 (4-13) situated at village Desu Jodhan, Tehsil Dabwali and that the respondents/accused have no relation with the land or the trees

standing thereon which are 35 years old *shisham* trees. On 23rd of August, 2012 i.e. on the fateful day at about 11.00 AM the accused have illegally cut-down the tree and have taken the same by loading it in the tractor-trolley.

3. Counsel for the petitioners submits that brother-in-law of the complainant earlier filed civil suit claiming permanent injunction in respect of the same piece of land wherein specific finding was returned that the plaintiff failed to show that he is in exclusive possession of the suit property and thus cannot claim injunction against the co-sharers i.e. Nanak Singh and Jaswant Singh. Both of them have been arraigned as accused No.1 and 2 in the present complaint. The contention raised is that Nanak Singh and Jaswant Singh having been found to be co-sharers in the suit property cannot be accused of offence punishable under Sections 447/379 IPC *viz-a-viz* tree standing on the said property. Reliance is being placed upon Full Bench judgment of this Court in **Bhartu vs. Ram Sarup, 1981 PLJ 204**.

4. Counsel for the respondent is not in position to dispute the fact that the petitioners Nanak Bawaria and Jaswant Singh have been held to be co-sharers in the suit property in the earlier *lis* initiated at the behest of the brother-in-law of the complainant.

5. I have heard rival contentions of the parties and have gone through records of the case.

6. The present complaint is at the behest of a co-sharer party who lost the civil *lis*. Disgruntled co-sharer matter and has initiated these criminal proceedings. The law w.r.t. framing of charge is no more *res*

integra. In order to frame the charge the Court has to be satisfied that there is a *prima facie* case made against the accused. The same has been emphasised by Supreme Court in the case of **State Through Deputy Superintendent of Police vs. R. Soundirarasu Etc., (2023)6 SCC 768**, observing 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.

7. Apex Court further relied upon following observations made in **Onkar Nath Mishra’s** case (*supra*):

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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*).

61. section 239 of the CrPC, 1973 lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in section 239 of the CrPC, 1973 means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.”

8. Division Bench of this Court in **CRA-D-212-2022** titled as **Jagtar Singh Johal @ Jaggi vs. National Investigation Agency and another**, decided on 19th of April, 2022 held as under:

“11. The law regarding exercise of jurisdiction by the Court at the time of framing of charge and/or at the time of considering the application for discharge is no more *res integra*. Apex Court in **Asim Shariff vs. NIA reported as (2019) 7 SCC 148** held that:-

“xx xx xx

16. Before we proceed to examine the facts of the present case, it may be apposite to take note of the ambit and scope of the powers of the Court at the time of considering the discharge application. This Court in Union of India Vs. Prafulla Kumar Samal & Ors.1 had an occasion to consider the scope of Section 227 CrPC and it held in

paragraph 7 as under: “7. Section 227 of the Code runs thus:

“If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he 1 1979(3) SCC 4 shall discharge the accused and record his reasons for so doing.” The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

(Emphasis supplied)”

9. Full Bench of this Court in the case of **Bhartu vs. Ram Sarup** (supra) has specified the rights and liability of co-sharer holding as under:

“4. The *inter se* rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Pb. 528**, and the following propositions, inter alia, were settled :-

- (1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.
- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.
- (7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

10. At this stage, this Court cannot go into probative value of the documents but the question to be ascertained is ‘*whether ingredients of the charging sections i.e. Section 447 as well as Section 379 IPC are proved or not?*’

11. Section 447 provides for punishment for criminal trespass. Criminal trespass has been defined under Section 441 of the Penal Code which reads as under:

“441. Criminal trespass.—

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

12. In the considered opinion of this Court, a co-sharer cannot be accused of criminal trespass upon entering a property which he co-owns with the complainant. He owns the property as the other co-owner does. Thus, it cannot be said that he has entered into the property in possession of the other. It is not a case of the complainant that they are in exclusive possession of the property. Thus, the essential ingredients of ‘criminal trespass’ are not satisfied.

13. Coming on to the ingredient of Section 379 IPC, that provides for punishment of theft defined under Section 378. Again a co-owner who is owner of an immoveable property cannot be said to have committed theft of a tree standing upon the land co-owned by him. As a result of the aforesaid discussion, this Court finds that the essential ingredients of Section 378 as well as Section 441 were not satisfied.

14. In view thereof and keeping in view the status of the parties i.e. the co-sharers and each & every co-sharer is deemed to be in possession of each and every inch of the land and has a right to use the same, this Court finds that the Trial Court erred in framing the charges against the petitioners.

15. In view of the above, the present petition is allowed. The impugned order/charge sheet dated 28th of September, 2016 passed by JMIC, Dabwali is ordered to be quashed.

March 05, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No