IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

275

CRR No.2785 of 2018 (O&M)
Date of decision: August 27th, 2024

Renu

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. R.S. Kundu, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, Assistant Advocate General, Haryana.

Mr. P.S. Jammu, Advocate
for respondent No.2.

Mr. Harsh Aggarwal, Advocate
for respondents No.3 to 6.

MANJARI NEHRU KAUL, J.

CRM No.29471 of 2018

Prayer in this application is for condonation of delay of 46 days in filing the petition.

For the reasons mentioned in the application, the same is allowed.

Delay of 46 days in filing the petition stands condoned.

CRR No.2785 of 2018

Learned counsel for the petitioner is challenging the order dated 07.04.2018 passed by learned Additional Sessions Judge, Sirsa, by which charges were framed against the accused under Section 306 read with Section 34 of the IPC.

2. Learned counsel has contended that FIR No.26 dated

26.08.2016 was registered under Sections 306 and 34 of the IPC at Police Station GRP, Sirsa, following the suicide of Anand Sawrup (hereinafter referred to as 'deceased'). A suicide note was recovered from the person of the deceased, leading to an investigation, and ultimately a charge-sheet was filed against Satish Kumar alias Gulab, Vivek Bharti and Praveen Singla.

3. While drawing the attention of this Court to the allegations in the FIR, the learned counsel has further made the following submissions:-

(i) that the marriage of the complainant was solemnized with the deceased 16 to 17 years prior to the suicide in question. The deceased was working as an Accountant from home. Several individuals owed the deceased money, and the deceased had also made payments for the purchase of a car, wherein also he had been cheated.

(ii). that the deceased would discuss everything with his wife (complainant), and remained very disturbed; Accused Satish Kumar alias Gulab also owed money to the deceased; to settle his debt, accused Satish Kumar alias Gulab issued cheques to the deceased, which were dishonored upon presentation at the bank. As a result of the cheques being dishonored, a case under Section 138 of the N.I. Act was registered by the deceased against accused Satish Kumar alias Gulab; To put pressure, accused Saish @ Gulab then filed a false case against the complainant party by concocting a story and preparing false bills, causing further distress to the deceased.

(iii). that additionally, the deceased and the complainant, along with accused Praveen Singla and his wife Gitanjali, went on a leisure trip to Haridwar, where accused Parveen Singla introduced them to his friend, accused Vivek Bharti, a resident of Haridwar; Both accused Parveen Singla and accused Vivek Bharti conspired to defraud the deceased by selling him a car (HR05 AG 9122). After taking full payment for the car, they neither delivered the car nor refunded the money, which further stressed the deceased.

(iv). that on 25.08.2016, at 9:00 AM, the deceased left his house, stating he was going to meet a Chartered Accountant. When he did not return for two hours, the complainant attempted to contact him, but he did not answer his phone. Later, the complainant was informed that the deceased had committed suicide by jumping in front of a train. A suicide note was recovered from his person, wherein he detailed about the harassment, and even the complainant categorically alleged that her husband was driven to suicide by the actions of the aforementioned persons.

(v). that the complainant, dissatisfied by the investigation, suspected collusion between the investigating agency and the accused persons. Consequently, she filed a petition under Section 482 of the Cr.P.C., seeking directions to transfer the investigation to the CBI to ensure that the involvement of all responsible persons is uncovered and that appropriate action is taken against them.

(vi). that the trial Court overlooked several financial transactions between the deceased and the accused persons, which were instrumental in abetting the suicide of the deceased.

(vii). that the trial Court had failed to consider material facts, as mentioned in the suicide note of the deceased, which highlighted the fraud perpetrated against him. Moreover, it was urged that to establish abetment under Section 306 of the IPC, the fraudulent actions under

Sections 420, 467 and 468 of the IPC need to be proven, as proving these charges would inherently establish the abetment by the accused persons. Thus, the charge framed under Section 306 read with Section 34 of the IPC, as per the impugned order ought to be modified to include charges under Sections 420, 467 and 468 of the IPC. The oversight by the trial Court in framing charges under Sections 420, 467 and 468 of the IPC constituted a grave illegality.

(viii). that however, the learned trial Court, vide impugned order dated 07.04.2018, erroneously framed charges against the accused persons only under Section 306 read with Section 34 of the IPC. It has been asserted by the learned counsel that since the FIR was based on the suicide note recovered from the person of the deceased, and it clearly disclosed the fraud committed against the deceased by the accused persons, hence charges ought not to have been framed only under Sections 306 and 34 of the IPC but also under Sections 420, 467 and 468 of the IPC.

4. *Per contra*, learned counsel for the respondents have submitted that they have no concern whatsoever with the present petition as they have not even been challaned by the police in the instant FIR what to talk of being charged by the trial Court vide the impugned order. Learned counsel have further submitted that the instant petition was not even maintainable as the accused, who had been charged vide the impugned order, had not even been made party in the instant petition.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. At the outset, a query was put to learned counsel for the

petitioner qua the maintainability of the instant petition as the accused against whom the petitioner is seeking enhancement of charges have not even been made party to the instant petition. To this, the learned counsel for the petitioner has stated that an application i.e. CRM-19657-2023 for placing on record the amended memo of parties had been filed as inadvertently necessary parties could not been arrayed, which was allowed vide order dated 02.05.2023 by this Court and, thereafter those necessary persons had been arrayed therein as parties. A perusal of the amended memo of parties, however, reveals that the three accused against whom the charges have been framed vide the impugned order dated 07.04.2018 have still not been impleaded as party in the instant case, whereas the persons impleaded as respondents No.2 to 6 have neither been charged nor find any mention in the impugned order.

7. Be that as it may, as far as the merits of the case are concerned, before proceeding further, it would be apposite to emphasise that framing of charges in a criminal trial is a crucial stage that determines whether the accused will face trial or be discharged based on the evidence at hand. This process, governed by provisions of Sections 227 and 228 of the Code of Criminal Procedure (Cr.P.C.), serves as a filter to ensure that frivolous or baseless prosecutions do not proceed to trial, while cases with sufficient *prima facie* evidence are duly tried. Hon'ble the Supreme Court has time and again interpreted and clarified the law on the framing of charges, striking a balance between protecting the rights of the accused and ensuring justice for the prosecution. Hon'ble the Supreme Court in ***Sajjan Kumar Versus CBI (2010) 9 SCC 368*** emphasized that the Courts must take a holistic view

of the material on record and not accept the prosecution's case blindly, especially if it is contrary to common sense or the broad probabilities of the case. The threshold requirement for framing charges, as laid down by Hon'ble the Supreme Court, is the existence of a *prima facie* case against the accused. At this stage, the Court is not required to delve into a detailed analysis of the evidence or assess its probative value. Instead, it must determine whether the material presented before it raises a strong suspicion that the accused may have committed the alleged offence. In *Sajjan Kumar's case (supra),* Hon'ble the Supreme Court stressed that a *prima facie* presumption of guilt is sufficient to proceed to trial, but this presumption is not reqired to be equivalent to proof beyond a reasonable doubt. Hon'ble the Supreme Court observed that even if the evidence proposed by the prosecution, when fully accepted, might not conclusively prove the guilt of the accused, it is still enough to frame charges if it leads to a strong suspicion. However, one of the key distinctions made by Hon'ble the Supreme Court is between **grave** suspicion and **mere** suspicion. While the former warrants the framing of charges, the latter does not. If the material before the Court shows a grave suspicion, the Court is fully justified in framing charges and putting the accused on trial. On the other hand, if the suspicion raised by the evidence is weak or speculative, the Court must discharge the accused. Hon'ble the Supreme Court has also clarified the principle that if two views are possible from the evidence presented, one leading to mere suspicion and the other to grave suspicion-the Court should lean towards discharging the accused if only a mere suspicion arises. This demarcation is vital, as it prevents unnecessary harassment of the accused by ensuring that only cases with substantive allegations are put on trial. Hon'ble the Supreme Court, in the case of ***State Versus Arun Kumar 2014 SCC SC 1018***, reiterated the considerations to be taken into account when framing charges under Section 228. The Court while referring to the case of *Sajjan Kumar (supra)* discussed the scope of Sections 227 and 228 of the Cr.P.C.

> *"8. The law on the point is succinctly stated by this Court in Sajjan Kumar v. CBI[2] wherein after referring to Union of India v. Prafulla Kumar Samal[3] and Dilawar Balu Kurane v. State of Maharashtra[4] this Court observed in para 19 thus:*
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>> *"It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."*
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> *This Court the went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21:*
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>> *"Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.*
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>> *21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:*
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>> *(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
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>> *(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*
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>> *(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to*

> *consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*
>
> *(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*
>
> *(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*
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> *(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
>
> *(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.*

8. In the wake of the above, it is necessary to examine the relevant provisions concerning the framing of charges as outlined under Section 228 of the Code of Criminal Procedure (Cr.P.C.), which is reproduced below:-

> *"228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 3 [or*

any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

9. In the present case, the complainant has challenged the trial court's order framing charges against the accused solely under Section 306 read with Section 34 of the Indian Penal Code (IPC), by arguing that charges under Sections 420, 467, and 468 of the IPC should also have been framed. For reference, the provisions of Sections 420 and 467 IPC are reproduced below:-

*"Section **420**. <u>Cheating and dishonestly inducing delivery of property.</u>*
Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

"*Section **467**. <u>Forgery of valuable security, will, etc.</u>*
Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a

*son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1 *[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

10. To attract the offence under Section 420 of the IPC, the following essential ingredients must be established:-

(i) Deception by the accused;

(ii) Dishonest inducement to deliver property;

(iii) Making, altering, or destroying a valuable security.

11. Therefore, one must demonstrate *mens rea* on the part of the accused, and this dishonest intention must be discernible from the inception of the transaction, pursuant to which a person has been cheated.

12. In the instant case, it is alleged that accused Satish Kumar borrowed money from the deceased and issued cheques that were dishonored, leading to a complaint under Section 138 of the NI Act. Since the deceased had already pursued legal remedies under Section 138 during his lifetime, raising the same issue to form charges under Section 420 of the IPC, after his death, would not only result in multiplicity of proceedings but also risk contradictory opinions from Courts of concurrent jurisdiction.

13. Regarding accused Parveen, his only involvement is alleged to be introducing the deceased to accused Vivek and facilitating negotiations for the sale of the car of the deceased. There is no allegation of delivery of property to Parveen, which is essential to constitute an offence under Section 420 of the IPC. As for accused Vivek, the allegation is that he failed to deliver the car despite receiving payment. However, there is nothing on record to show that he had dishonest intent at the inception of the transaction, a crucial element for an offence under Section 420 of the IPC. It is trite law that mere subsequent non-performance of any agreement cannot by itself attract the mischief of Section 420 of the IPC. Additionally, no allegations of forgery have been made against the accused to attract offences under Sections 467 and 468 of the IPC.

14. Thus, the essential ingredients of the offences under Sections 420, 467, and 468 of the IPC are not made out and there is no illegality in the trial court's order regarding the non-framing of charges under these sections.

15. As a sequel to the above, the instant petition stands dismissed.

16. Pending application, if any, stands disposed of.

17. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 27th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes