

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

233

CRR No. 3596 of 2018 (O&M)

Date of Decision: 29.02.2024

Krishan @ Tiwari

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shailender Singh Gill, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. M.S. Dalal, Advocate
for the complainant.

HARPREET SINGH BRAR, J.(ORAL)

1. The prayer in the present revision petition is for setting aside the impugned order dated 18.07.2018 passed by learned Additional Sessions Judge, Kaithal vide which the charge under Section 306 IPC was framed in FIR No. 128 dated 04.04.2016 filed under Sections 120-B, 306, 342, 420, 467, 471 and 506 of the IPC registered at Police State City Kaithal.
2. Briefly, the facts are that on 21.06.2012, the petitioner along with the co-accused intoxicated the brother of the complainant Shriram, namely Rajbir and got an agreement to sell pertaining to land measuring 19 Kanal 18 Marlas situated in the area of Patti Koth and a receipt for Rs. 40,00,000/- executed from him, without making any payment. The accused also obtained his thumb impressions/ signature on many typed and blank papers. Rajbir was kept confined in the house of the petitioner at gun point. On 23.06.2012, after being released, Rajbir narrated the entire incident

to his family after which, a panchayat was held wherein the petitioner admitted to the allegations. The petitioner received Rs. 65,000/- for alcohol related expenses and promised to cancel the agreement to sell and the receipt before the panchayat but failed to do the same.

3. On 23.11.2015 complainant-Shriram moved an application before the Superintendent of Police, Kaithal to initiate legal proceedings against the accused. The same was marked to CIA 3rd Police Line, Kaithal where the statement of Rajbir was also recorded. The final report under Section 173 Cr.P.C. dated 14.06.2016 (Annexure P-3) was filed only against the petitioner under Sections 420, 120-B, 342, 506 of the IPC. A supplementary challan dated 10.04.2018 (Annexure P-4) was filed whereby offences under Sections 467, 471, 306 of the IPC were added and four other persons were arrayed as the accused. Thereafter, charges were framed by the learned Additional Sessions Judge, Kaithal vide impugned order dated 18.07.2018

4. Learned counsel for the petitioner *inter alia* contends that while the brother of the complainant namely Rajbir died during the pendency of the trial, there is nothing on record to even remotely suggest that the death was caused unnaturally. No material is available on record to indicate the commission of offence under Section 306 of the IPC. Moreover, no specific instance for allegation are made to make out the ingredient of instigation as provided under Section 107 of the IPC in order to make the petitioner liable for the offence under Section 306 of the IPC. It is further contended the impugned order was passed by the learned trial Court without any application of mind and without going through the material available on record and thereby deserves to be set aside.

the time of framing of the charges, the trial Court is not required to go into probative value of the evidence and examine the defence set up by the petitioner. The degree of satisfaction is limited to ascertaining whether a *prima facie* case exists.

6. I have heard learned counsel for the parties and perused the case file with their able assistance. With the consent of parties, the case is taken up for final disposal.

7. 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 Sections 227, 239 and 240 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 Hon'ble Supreme Court has in extension laid down the principles for the purpose of framing of charges in **P. Vijayan Vs. State of Kerala (2010) 2 SCC 398**.

8. A two Judge Bench of the Hon'ble Supreme Court in **Union of India Vs. Prafulla K Samal (1979) 3 SCC 4** speaking through Justice S.M. Fazal Ali, has held as under:-

“10. Thus on consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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:

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

9. While dealing with similar controversy, a two Judge Bench of the Hon’ble Supreme Court **Vishnu Kumar Shukla and another Vs. The State of Uttar Pradesh and another** in Criminal Appeal No.3618 of 2023 decided on 28.11.2023, speaking through Justice Ahsanuddin Amanullah, has held as under:-

*“19. In **Rumi Dhar v State of West Bengal, (2009) 6 SCC 364**, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.’*

*20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are wellsettled, courtesy, inter alia, **State of Bihar v Ramesh Singh, (1977) 4 SCC 39**; **Union of India v Prafulla K Samal, (1979) 3 SCC 4**; **Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715**; **Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76**; **Dilawar B***

*Kurane v State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with **Prafulla K Samal (supra)**, where, after considering **Ramesh Singh (supra)**, **K P Raghavan v M H Abbas, AIR 1967 SC 740** and **Almohan Das v State of West Bengal, (1969) 2 SCR 520**, it was laid down as under:*

‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.(emphasis supplied)

*21. In **Niranjan Singh Karam Singh Punjabi (supra)**, this Court was alive to reality, stating that ‘... it cannot be expected even at the 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.’ If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is*

*empowered to discharge the accused, as pointed out in **Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368**. The Court, in **Dinesh Tiwari (supra)** had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is 'strong suspicion', reference to **Dipakbhai Jagdishchandra Patel (supra)** is warranted, where it was explained that it is '... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.'*

10. Recently, the Hon'ble Supreme Court in **Shashikant Sharma and others Vs. State of Uttar Pradesh and another** passed in Criminal Appeal @ SLP (Criminal) No.5323 of 2023 on 01.12.2023 has held that from the admitted evidence of the prosecution as reflected in the documents filed by the Investigating Officer in the report under Section 173 Cr.P.C., if the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.

11. In addition to the guidelines issued by **Prafulla Kumar Samal (supra)** and **P. Vijayan (supra)**, this Court deems it proper to formulate *inter alia* the following guiding principles for the purpose of framing of charges:

(i) Merely because the prosecution has presented its version couched in verisimilitude, the trial Court is not supposed to act like a postmaster. If the allegations are so absurd and explicitly implausible that no prudent man would entertain any suspicion regarding the commission of the offence, the trial Court must apply its judicial mind and ascertain the existence of factual ingredients breaching the threshold of the alleged offence for the purpose of framing charges. The assessment of the trial Court, in such a scenario, must satisfy the objective standard of reason and prudence.

(ii) The trial Court is not required to provide reasons for framing of a charge, however once the question of jurisdiction arises and the matter which was previously triable by Magistrate becomes a Sessions trial or vice versa, if the accused objects, the trial Court must state reasons for addition of a charge.(See: **Lalu Prasad @ Lalu Prasad Yadav v. State of Bihar Through CBI (AHD) Patna 2007(1)R.C.R.(Criminal) 305)**)

12. Adverting to the factual matrix of the present case, it transpires that the FIR was registered on 04.04.2016 while the final report under Section 173 Cr.P.C. was filed on 16.06.2016 against the petitioner for commission of offences under Sections 342, 420, 506, 342, 306 read with 120-B of the IPC. However, Rajbir, brother of the complainant, died on 02.02.2016 (Annexure P-13), during the pendency of the trial. Thereafter, on 10.04.2018, a supplementary challan under Section 173 Cr.P.C. was filed by adding sections 467, 471 and 306 of the IPC and arraying four more persons as the accused, making it a Sessions trial while it was originally triable by the Magistrate.

13. The learned trial Court has, vide the impugned order dated 18.07.2018, has framed charges under Sections 420, 467, 471, 306 and 506 read with 120-B of the IPC against the petitioner and co-accused. The learned trial Court erroneously charged the petitioner for commission of offence under Section 306 of the IPC, without bothering to notice if any material or medical evidence is available on the record to suggest that Rajbir died an unnatural death. In the absence of the Post-Mortem Report or any other material, it is inexplicable as to how charge under Section 306 of the

P-13) is placed on record, which itself cannot prove the abetment within the meaning of Section 107 of the IPC sans any specific instances of instigation. This Court is fully satisfied that there is no ground or material available for presuming that the alleged offence under Section 306 of the IPC has been committed the by the petitioner.

14. In view of the discussion above, this Court is of the view that the learned trial Court has erred in framing charge under Section 306 of the IPC. Therefore, the present petition is allowed and the impugned order dated 18.07.2018 to the extent of framing of charges under Section 306 of the IPC is set aside.

15. Pending miscellaneous application(s), if any, also stand disposed of.

29.02.2024

(HARPREET SINGH BRAR)

Rajeev (rvs)

JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes