

2024:PHHC:031261

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

229

CRR-2274-2019 (O & M)

Date of Decision: 28.02.2024

NAVRAJ SINGH AND OTHERS

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Rajvinder Kaur, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR, J.(ORAL)

The prayer in the present revision petition is for setting aside the impugned order dated 29.07.2019 passed by learned Additional Sessions Judge, S.A.S Nagar (Mohali) vide which the charge under Section 307 of the IPC was framed in FIR No. 17 dated 15.03.2019 filed under Sections 307, 186, 353, 332, 201, 34 of the IPC and 181 of the Motor Vehicles Act, 1988 (hereinafter 'MV Act') registered at Police State Sadar Kurali, S.A.S Nagar.

2. Briefly, the facts are that on 14.03.2019, the complainant namely Manpreet Singh, along with one Harvir Singh was driving government vehicle bearing registration no. PB-65-X-2372 and had reached the Toll Plaza, Badori checkpoint when a Swift car bearing registration no. PB-43-D-7565, with four young men sitting inside, reached there. On being asked to stop, the accused opened the car window and hit the left side of the complainant's face with an iron rod and fled away. The police party chased the said car and finally stopped at Morinda. The accused came out of the car

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and started beating the complainant. One of the accused gave a blow on the left side of his head with a sharp edged weapon. The complainant's colleague Jagwinder Singh alias Jagga arrived at the spot and tried to rescue him but the accused inflicted injuries on him as well. Thereafter, the local police reached the spot and apprehended three of the four accused as the fourth accused fled away from the spot.

3. On completion of investigation, final report under Section 173 Cr.P.C was presented before the learned trial Court on 21.05.2019. Subsequently, charges under Sections 307 read with 34, 186 and 353 of the IPC were framed vide impugned order dated 29.07.2019.

4. Learned counsel for the petitioner *inter alia* contends that petitioner nos. 1, 3 and 4 were followed by a white Bolero case and apprehending danger, they made calls to their family members. Petitioner no. 2 was not present at the spot at the time of the incident, which can be corroborated by his phone location. She submits that petitioner no. 2 reached the spot after getting information regarding the incident and was illegally brought to the police station. She further contends that the Morinda Police in connivance with Kurali Police, produced the petitioners-accused before the CIA staff without even registering an FIR. The police subjected petitioner no. 2 to custodial torture and inflicted injuries on his feet and head, which is supported by the medical report dated 29.03.2019 (Annexure P-2).

5. Learned counsel further contends that the learned trial Court has erred in framing charge under Section 307 of the IPC as there is no material on record to indicate that the injuries sustained by the alleged victims were dangerous to life. In fact, the medical report of the complainant

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categorically establishes the injuries sustained as simple in nature. Moreover, the FIR mentions that the complainant was in a black Scorpio car bearing registration no. PB-65-X-2372 while the CCTV footage of the date of the incident clearly shows the vehicle to be a white Bolero car bearing registration no. PB-65-AM-3819. Also, the phone location of ASI Hardarshan Singh, HC Jaspal Singh and Constable Harveer Singh was that of Police Station Kurali while the FIR states that they were at the checkpoint near the toll plaza. Furthermore, the CCTV footage from Police Station Kurali, Police Station Morinda and CIA Staff, Kharar as well as Government Hospital, Morinda and Babu Ram and Son's HP Petrol Pump would indicate complainant neither received any injuries nor was he admitted in the hospital. The complainant is merely taking advantage of his post as he is an official of the Punjab Police in order to harass the petitioners. As such, the impugned order deserves to be set aside.

6. *Per contra*, learned counsel for the complainant submits that while the injuries sustained by the victims have been declared simple in nature, the petitioners-accused inflicted said injuries on the vital organs of the victims using a sharp-edged weapons. Therefore, the learned trial Court has correctly appreciated the facts to frame charge under Section 307 of the IPC. Further, at 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.

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7. 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.

8. 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**.

9. 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. Fazalali, has held as under:-

*“(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.”

10. 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.’”

11. 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.

12. A perusal of the medico-legal report (Annexure P-5) of the complainant-injured reflects four injuries on his person and the same are reproduced below:

Sr. No.	Injury Details	Injury Number
1.	Sharp wound 4cm X 0.2cm over left frontal region of head. Fresh bleeding present. ADV CT Head.	1
2.	Bruise 8cm X 3cm over right side of face and associated with abrasion. ADV CT head and face.	2
3.	Bruise on left lateral side of back	3
4.	Bruise associated swelling over right upper limb.	4

After examining the nature and extent of injuries, the Medical Officer/doctor has opined that the injuries are simple in nature and not dangerous to life.

13. For just adjudication of the case at hand, this Court deems it proper to analyse Section 307 of the IPC, which reads as follows:

“Section 307 Attempt to murder
Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.”

A bare reading of the abovementioned section would indicate that the intention or knowledge to cause death is a *sine qua non* to attract the offence under Section 307 of the IPC. In the case at hand, neither the injuries sustained by the complainant have been considered grave enough to be dangerous to life, nor a *prima facie* case has been made out to indicate the intention of the petitioners-accused to cause death of the complainant. Therefore, this Court is of the considered view that sufficient material is not available on record to frame charge under Section 307 of the IPC, rather adequate grounds are made out to attract offence under Section 324 of the IPC.

14. In view of the discussion above, the present petition is allowed and the impugned order dated 29.07.2019 is set aside to the extent of framing of charge under Section 307 of the IPC. The matter is remanded back to the learned trial Court to frame charges afresh. Needless to say, the learned trial Court shall proceed in accordance with law and decide the case on its own merits, without being influenced by any observations made by this Court in this order, which are only for the purpose of deciding the present revision petition.

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

February 28, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No