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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRR No.2407 of 2023
Date of Decision: 20.12.2024

Vikas ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manish Soni, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed against the order dated 18.09.2023 passed by the Court of learned Sessions Judge, Gurugram in Sessions case bearing CIS No.SC-415 of 2023 tiled as *State of Haryana v. Vikas*, arising out of FIR No.182 dated 01.10.2021 registered under Sections 115, 186, 307, 332, 34, 180 and 353 of IPC and Sections 25 (1B) (a), 27 (1) and 29 (b) of Arms Act, 1959 (For short Act, 1959”) at Police Station Bajghera, District Gurugram, whereby charges under Section 115 of Indian Penal Code and Section 29 (b) of Act, 1959 were framed as against the petitioner.

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2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the allegations that on the intervening night of 30.09.2021/01.10.2021, the co-accused Dara Singh @ Dhara, Abhinav Sharma @ Chunnu, Amit @ Meeta, Ajit Singh and Chetan Maan @ Boxer, had caused obstruction in discharge of official duties of ASI Neeraj Kumar, HC Bir Singh, HC Jogender Singh, EHC Vishnudutt, HC Pardeep and Constable Surender Singh, while voluntarily causing hurt to HC Bir singh and using criminal force to deter the above named police officials from discharge of their official duties as public servant. As per the allegations, the accused Dara Singh @ Dhara had fired a gunshot with countrymade pistol while attacking upon ASI Neeraj Kumar, with such intention or knowledge or under such circumstances that by his act, he could have caused the death of ASI Neeraj Kumar or any other member of the police party. Three of the assailants had been apprehended at the spot. The accused Dara Singh @ Dhara, Amit @ Meeta and Abhinav Sharma @ Chunnu were arrested during the course of investigation. Challan was presented against them. On completion of investigation. Subsequently the accused Ajit Singh was also arrested and supplementary challan was presented against them.

3. As per the further allegations, the accused Dara Singh @ Dhara had suffered disclosure statement to the effect that the countrymade pistol used by him at the time of occurrence and two live cartridges, had been taken by him from the present petitioner. The petitioner could not be arrested

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at the stage of presentation of challan as against the co-accused. His presence was secured on 03.03.2023 in pursuance of issuance of production warrants as he was in custody in some other case. He was arrested and booked under Section 29 (b) of the Act, 1959. The co-accused had already been arrested and were facing trial. After completion of investigation against the petitioner, supplementary challan under Section 173 (2) of Cr.P.C. was presented against him. On a perusal of the challan report and the accompanying documents and on finding a prima facie case for commission of offences punishable under Sections 115 of IPC and 29 (b) of the Act, 1959, the learned trial Court charge-sheeted the petitioner thereunder vide impugned order dated 18.09.2023 and feeling aggrieved from the same, the instant petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned order dated 18.09.2023 is not sustainable in the eyes of law as while passing the same, the learned trial Court failed to consider the fact that no prima facie case for commission of either of the aforementioned offences had been made out as against the petitioner. It is argued that while framing charge under Section 115 of IPC, the learned trial Court ignored the fact that charge under this provision could only be framed, when it was either alleged or prima facie established that any offence punishable with death or imprisonment for life was abetted by the accused irrespective of the fact that the offence abetted was committed or not committed. However, there was no allegation at all against him that he had abetted commission of any such

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offence. It is, therefore, urged that the charge so framed is not sustainable and is liable to be set aside.

5. With regard to the offence under Section 29 (b) of the Act, 1959, it is argued that the allegations against the petitioner were that he had delivered a countrymade pistol and two cartridges to the co-accused Dara Singh. It is stressed that since the co-accused Dara Singh has been acquitted of charge under Section 25 (1B) (a) of IPC vide judgment dated 27.04.2023 as passed by the Court of Sessions Judge, Gurugram, who observed that the charge under this section had not been proved beyond doubt, therefore, the allegation that any arm or ammunition had been delivered by the petitioner to the co-accused was also not made out and hence, no charge under Section 29 (b) of the Act, 1959 could be framed. With these broad submissions, it is argued that since even on taking the allegations as levelled against the petitioner to be correct on the face of record, no case for commission of the offences under Sections 115 of IPC and 29 (b) of Act, 1959 has been made out, therefore, the impugned order is liable to be set aside and the petition deserves to be allowed.

6. Per contra, it is argued by learned State counsel that there is no illegality or infirmity in the impugned order. The accused Dara Singh @ Dhara had made a disclosure statement to the effect that the countrymade pistol and cartridges which were used by him at the time of occurrence were delivered by the petitioner. Further even in his own disclosure statement, the petitioner admitted so. It is further argued that at the stage of framing charge,

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the learned trial Court was required to consider the broad probabilities of the case and not to conduct a mini trial and, therefore, it is argued that the impugned order deserves to be upheld.

7. I have heard learned counsel for the parties at considerable length and have gone through the record.

8. Before delving into the correctness of the impugned order whereby charges under under Section 115 of Indian Penal Code and Section 29 (b) of Act, 1959 were ordered to be framed, this Court considers it necessary to reiterate the well settled proposition of law pertaining to framing of charges and the scope of this Court to interfere under Sections 397 and 401 of Cr.P.C.

9. At the outset, reference can be made to an authoritative pronouncement of Hon'ble Supreme Court reported as **Union of India v. Prafulla Kumar Samal**, (1979) 3 SCC 4, wherein the following principles had been laid down while dealing with the question of discharge under Section 227 of Cr.P.C. or framing of charge under Section 228 of Cr.P.C., the relevant para is reproduced 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

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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)

10. Reliance can also be placed upon **Sajjan Kumar v. CBI**, (2010) 9 SCC 368, wherein the Hon'ble Supreme Court had considered the powers of Courts in respect of framing of charge and discharge and the fact that a *prima facie* case would depend upon the facts and circumstances of

each case and had laid down the following principles:-

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“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 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 cases would depend upon the facts of each case.

(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.

(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

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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.

(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 disclose 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”.

(Emphasis supplied)

11. It has been held time and again by the Hon’ble Supreme Court that at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining whether or not a *prima facie* case has been made out against the accused. The trial Court must exercise its judicial mind to the facts of the case before arriving at a conclusion that there is sufficient ground for proceeding against the accused.

It has been observed that such exercise must be undertaken so as to ensure

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that an individual does not have to be put through the rigors of the criminal judicial system for no fault of his. The sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame charge against him. Reference in this regard can also be had to the observations made by Hon'ble Apex Court in **P. Vijayan Vs. State of Kerala**, (2010) 2 SCC 398 and **Vishnu Kumar Shukla and another Vs. State of Uttar Pradesh and another**, AIR 2024, Supreme Court 90.

12. In view of the proposition of law as settled in the above cited cases with regard to framing of charge, it is to be considered as to whether the learned trial Court had rightly proceeded to frame charges under Sections 115 of IPC and 29 (b) of the Act, 1959 as against the petitioner.

13. As per Section 115 of IPC, when an offence punishable with death or imprisonment for life is abetted and accused abets the commission of such offence, then he is liable for punishment for a period of seven years, if that offence is not committed in consequence of the abetment and in the second situation where the offence abetted is committed in consequence of the abetment and act causing harm is done in consequence, then such accused is liable for punishment for a term which may extend to 14 years besides imposition of fine. If a person instigates another or engages with another in a conspiracy for the doing of the act which is an offence, he abets such an offence and would be guilty of abetment under Section 115 of IPC

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even if the offence abetted is not committed in consequence of the abetment.

"Abetment" is defined under Section 107 of IPC as comprising:-

- (a) Instigation to commit the offence,
- (b) Engaging in conspiracy to commit the offence, and
- (c) aiding the commission of an offence.

14. The essence of crime of abetment is that the abettor should substantially assist the principal culprit towards commission of offence. Concurrence in criminal acts of others without participation does not come within the purview of abetment. It is well settled that in order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he had taken part in those steps of the transaction which are innocent, but in some way or the other, it is absolutely necessary to connect him with those steps of the transaction which are criminal.

15. Section 115 of IPC is attracted when offence punishable with death or imprisonment for life is abetted by an accused. Mens rea is one of the essential ingredients for commission of such offence. It is well established that abetment involves a mental process of entering into conspiracy for doing of a thing or a mental process of aiding a person in doing a thing or in the mental process of instigating i.e. to goading, urging forward, provoking, enticing or inscribing to do a thing. Thus, abetment implies an intentional act or omission on the part of the person who is alleged to have abetted an act. In the instant case, the petitioner has been charge-sheeted under Section 115 of IPC on the allegations that he abetted

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commission of offences punishable under Sections 186, 307, 332 and 353 of IPC by the co-accused. The offence under Section 307 of IPC is punishable upto imprisonment for life. However, it is to be seen as to whether the material collected against the petitioner during the course of investigation was prima facie sufficient to show that the petitioner had abetted commission of offence of attempting murder of the police officials by the co-accused.

16. On going through the contents of the challan report and the accompanying documents copies of which have been placed on record, I am of the considered opinion that even on taking the allegations levelled against the petitioner in the challan report to be correct at their face value, the existence of the ingredients required to constitute the offence under Section 115 of IPC has not been made out. As per the allegations, the co-accused made attempt to commit murder of the police officials when they were intercepted by those police officials at a barricade at the time of occurrence and when the police officials had given signal to them to stop. Apparently and obviously the co-accused gathered common intention to open assault upon the police officials at the spur of the moment without any premeditative mind and without hatching a criminal conspiracy as obviously they could not expect in advance that the police officials were going to intercept them. Once it was so, the ingredients for commission of offence under Section 115 of IPC could not be attracted and they would have been attracted if the offence abetted i.e. offence of making attempt to kill, could

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not be committed. If the petitioner had abetted the offence of murder/attempt to murder the police officials and in consequence of that the accused persons attempted the murder, then Section 115 IPC had no implication. Since as per the allegations, the co-accused had committed the offence of attempt to murder, hence the offence under Section 115 of IPC could not be invoked as against the petitioner.

17. More so, there is nothing on record to show that the alleged delivery of firearms by the petitioner to the co-accused Dara Singh was part of some conspiracy to assault police officials and to make an attempt to kill them or that the petitioner knew before hand that such weapon was given by him to the co-accused for the purpose of making attempt to kill police officials. The Hon'ble Supreme Court in recent pronouncement cited as **Shashikant Sharma and others Vs. State of Uttar Pradesh and another**, 2024(1) RCR (Criminal) 67, has observed that if 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., the necessary ingredients of an offence are not made out, then the Court is not obliged to frame charge for such offence as against the accused. Since in view of the discussion as made above, it is explicit that the material placed on record did not disclose a case for commission of offence punishable under Section 115 of IPC as against the accused, therefore, in the considered opinion of this Court, the learned trial Court erred in framing charge under the aforementioned section as against the petitioner.

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18. So far as the charge under Section 29 (b) of the Act, 1959 is concerned, as per this provision, a person who delivers any arms or ammunition into possession of another person without previously ascertaining that such person is not prohibited by the act or any other law from having, in his possession such arm, is liable for punishment. The allegations against the petitioner are that he had delivered one countrymade pistol and two live cartridges to the co-accused Dara Singh. As already discussed, the said accused has been acquitted of the charge framed against him under Sections 25 (1B) (a) and 27 (1) of the Act, 1959 by the Court of learned Sessions Judge, Gurugram by holding that the commission of offence under this section had not been proved as against the co-accused beyond doubt. When the co-accused Dara Singh to whom the alleged delivery of firearm by the present petitioner had been attributed, himself has been acquitted of charge under Section 25 (1B) (a), then, the present petitioner could not have been charge-sheeted on the allegations that any firearm had been delivered by him to the abovesaid co-accused. The very foundation of formation of opinion before framing charge is that as to whether there was sufficient material on record to prove a prima facie case for commission of a particular offence. In the instant case, even on considering the admitting evidence of the prosecution as collected during the course of investigation and as reflected from the record, it is observed that the necessary ingredients for commission of offences under Section 115 of IPC and Section 29 (b) of the Act, 1959 are not made out. The order passed

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by the learned trial Court thereby framing charges under the aforementioned sections is not sustainable in the eyes of law and is liable to be set aside. Accordingly, in view of the reasons as enumerated above, the petition is allowed, the impugned order is set aside and the petitioner is ordered to be discharged.

19. A copy of this order be sent to the concerned Court.

20.12.2024
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(MANISHA BATRA)
JUDGE

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