

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110 CRR-2899-2022
Date of Decision : February 06, 2024

AMIT @ KAKU @ BEINGAN AND ORS -PETITIONERS

V/S

STATE OF HARYANA AND ANR. -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Puran Singh Hundal, Sr. Advocate with
Mr. Gursahib Singh Hundal, Advocate
Mr. Ankush Chauhan, Advocate and
Mr. Harnamanpreet Singh, Advocate
for the petitioners.

Mr. Bhupender Singh, D.A.G., Haryana.

Mr. Kanwaljeet Cheema, Advocate
for the respondent No.2/complainant.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant revision petition, the petitioners assail the order dated 02.12.2022, whereby, the learned Additional Sessions Judge, Karnal, has chargesheeted the petitioner to face trial for commission of offences punishable under Sections 148, 149, 323, 325 and 307 of the IPC.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE PETITIONERS

2. The prime argument of the learned senior counsel for the petitioners is anchored upon the factum that, despite the purportedly incriminating material, as collected by the investigating agency and produced before the learned trial Court concerned, being not even

remotely suggestive *qua* commission of offence punishable under Section 307 of the IPC, yet the learned trial Court concerned has erred in chargesheeting the petitioners for that offence too.

3. The learned senior counsel, in his assailing the impugned order (*supra*), has argued that, though thereby the learned trial Court has chargesheeted the petitioners, however, neither any reasons have been assigned therein in support of such decision, nor any discussion has been made therein *qua* the material, which propelled it to conclude that the petitioners are amenable for being chargesheeted for commission of offence punishable under Section 307 of the IPC.

4. The learned senior counsel has further argued that, although allegations have been levelled *qua* injuries being inflicted to the victim/injured by eight persons, which may have perhaps weighed with the learned trial Court to chargesheet the petitioners under Section 307 of the IPC, however, what emanates from the record is that the victim/injured has not suffered any injury on any vital part of his body. In such circumstances, when the petitioner did not suffer any injury on any vital part of his body, therefore, it becomes clearly apparent that there was no intention of the petitioners to kill the victim/injured and as such, they have wrongly been chargesheeted under Section 307 of the IPC. Moreover, to buttress this argument, he has drawn attention of this Court towards Annexure P-9, which is the opinion expressed by the Board of Doctors concerned, and wherein, it has been opined that, though the victim/injured has suffered multiple injuries and some of them have been declared to be grievous in nature, however, it has been specifically

opined therein that the injuries are “Not Dangerous to Life”. The operative part of Annexure P-9 is reproduced hereinafter:-

“Operated case of bilateral Tibia Fracture with Ex. Fixator B/L insite with multiple discharging senus with stern recrosis.

Surgery Debridement and Fixator Exchange B/L Legs and local miocutaneous Flap (large) RI UAC _____ (Bilateral) done.

So, nature of Injury No. grievous in nature (Not danger to life)..”

5. Concluding his arguments, the learned senior counsel for the petitioner has argued that, had the learned trial Court concerned taken into consideration all these factual aspects, the impugned order may not have been passed, inasmuch as, neither the investigation agency is seized of any inculpatory material against the petitioners, nor it fulfilled the mandatory ingredients for invocation of Section 307 of the IPC against the petitioners.

SUBMISSIONS OF THE LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE COMPLAINANT

6. *Per contra*, learned State counsel, who is assisted by the learned counsel for the complainant/respondent No.2, has opposed the arguments raised by the learned senior counsel for the petitioner, on the ground that, there are specific allegations levelled against the petitioners, which are sufficient to chargesheet the petitioners for commission of offence under Section 307 of the IPC. He further submits that, since the petitioners have evidently inflicted 16 injuries to the victim/injured, which comprises of grieves injuries also, therefore, a *prima facie* case for commission of offence under Section 307 of the IPC is made out against the petitioner.

REASONS FOR DISMISSING THE INSTANT PETITION

7. This Court, with the able assistance of both the counsels appearing for the contesting litigants, has scrutinized the entire record available before this Court, and, is of the opinion that the impugned order dated 02.12.2022 does not suffer from any illegality or perversity, rather the same is a well drawn order. The reasons for forming this inference are recorded hereinafter.

8. The primary reason for forming the above inference ensues from the factum that the *mens rea* of the petitioner to kill the victim/injured *prima facie* is apparent from the allegations narrated in the FIR, inasmuch as, there are specific allegations that firstly the petitioners collided their car into the motorcycle of the deceased, and thereupon, they tried to overrun the victim/injured under their car, however, could not succeed. The relevant extract of the FIR is reproduced hereunder:-

“.....They stuck the car in the motorcycle of my brother, as a result of which, my brother fell down at some distance. When he was so lying, they tried to pass the car over him, but the car collided with a pillar by the roadside and stopped there....”

9. Furthermore, the victim/injured Gurjinder Singh, in his statement recorded under Section 161 of the Cr.P.C., has made the hereinafter extracted statement:-

“...At that time, a Car No. HR-05-AM-8991 of White shade, came at a high speed and collided on the rear side of my motorcycle for the purpose of killing me....”

10. Another reason for forming the above inference emanates from the factum that, the 16 injuries suffered by the victim/complainant, *prima facie* reveal the commission of offence under Section 307 of the IPC.

11. Insofar as one of the arguments of the learned senior counsel

for the petitioner is concerned, which relates to, the impugned order (supra) being a non speaking order, as it does not carry any reasons for chargesheeting the petitioners, the learned counsel for the complainant has refuted the said argument, by drawing attention of this Court towards the hereinafter discussed legal pronouncements.

12. In “*Sajjan Kumar vs. CBI*”, 2010(4) R.C.R. (Criminal) 382, the Hon’ble Supreme Court has laid down the hereinafter extracted principles:

“(i) The Judge while considering the question of framing the charges under Section 227 CrPC, 1973 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.

(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 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.”

13. In “**Tarun Jit Tejpal Vs. State of Goa & Anr.**”, 2021(2)

R.C.R. (Criminal) 42, the Hon’ble Supreme Court has held that the merits of the case are not required to be dealt with, at the stage of framing of charge, rather the same are required to be considered at appropriate stage during trial. The relevant extract of this judgment is reproduced hereinafter:-

“.....Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the Victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned

Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.”

14. Moreover, in **“State of Maharashtra v. Som Nath Thapa”, 1996(2) R.C.R. (Criminal) 480**, the Hon’ble Supreme Court has held that, if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. The relevant extract of this judgment is reproduced hereunder:-

“The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

15. Therefore, in view of the law laid down by the Hon’ble Supreme Court, the court concerned is not required to give detailed reasons, at the time of framing of charges, however, it is only required to examine whether, from the allegations and materials available on record, a *prima facie* case against the accused is made out or not.

16. Now, insofar as the argument raised by the learned senior counsel for the petitioner, that the injuries suffered by the injured/victim have been declared as “Not Dangerous to Life”, is concerned, it is trite law that merely the nature of injuries cannot constitute the bedrock to gather the intention, i.e. ‘*mens rea*’ of the accused, or, the innocence of

the accused, inasmuch as, (i) there may be circumstances, where despite having intention to kill a person, the assault may result in the said person receiving simple injuries or even no injuries; (ii) there may also be circumstances, where, without there being any intention to kill a person, yet the said person receives grievous injuries, which are dangerous to his life. Therefore, to gather the *mens rea*, the facts and circumstances are to be considered in entirety, which can only be done during trial, whereas, at the time of framing of charges, the court concerned is required to sift and weigh the materials available on record, only for the purpose of making a *prima facie* opinion.

17. Gainful reference in this regard can be made to “***Naresh Kumar Sehgal V/s State of Punjab and Anr.***”, 2012(4) ***Law Herald*** 3053, wherein, a Co-ordinate Bench of this Court has held that “*the nature of the injury is not sufficient enough to arrive at a conclusion whether offence under Section 307 of the IPC is made out or not. At the time of framing of charge, the prima facie evidence is only required to be seen.*”

18. Therefore, it is indisputably explicit that, at the stage of framing of charge, the learned trial Court concerned is only required to evaluate the allegations and not the probative value of the material produced by the prosecution, for thereby arriving at a conclusion, whether or not, the accused are required to face trial for the offences, for which they have been sent by the investigating agency. In the instant case also, the learned trial Court concerned has sifted the evidence only for the limited purpose of finding out, whether or not, a *prima facie* case is made

out against the petitioners, and thereupon only, the petitioners have been chargesheeted.

FINAL ORDER

19. For all the reasons (supra), the instant petition is **dismissed, and**, the impugned order dated 02.12.2022 is maintained and affirmed. However, liberty is reserved to the petitioners to raise all the pleas and claims, as raised herein, before the learned trial Court, at an appropriate stage.

February 06, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No