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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1014-2020 (O&M)
Date of decision: 10.02.2025

Sucha Singh and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Kishan Garg, Advocate
for the petitioners.

Mr. Rishabh Singla, AAG, Punjab.

Mr. Tarun K. Sharma, Advocate
for respondents No.2 to 11.

HARPREET SINGH BRAR, J.

1. Present revision petition has been preferred against the order dated 15.02.2020 passed by learned Additional Sessions Judge, Fatehgarh Sahib, vide which the respondents-accused were not chargesheeted under Section 308 of the Indian Penal Code, 1860 (for short 'IPC') [*now Section*

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110 of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS')], in case arising out of FIR No.99 dated 03.07.2012 (DDR No.57 dated 03.07.2012) under Sections 323, 325, 148, 149, 201 of IPC (now Sections 115(2), 117(2), 191(3), 190, 238 of BNS), registered at Police Station Fatehgarh Sahib.

2. Brief facts of the case are that on 03.07.2012 at about 07.30 a.m., private respondents along with some other persons, names of which are mentioned in the FIR (*supra*), came in front of house of the complainant and raised lalkara and said that they would throw cow-dung in the rasta near Roori and would see the persons, who would stop them. When the complainant along with his wife Karamjit Kaur and sons, namely Jasbir Singh and Mandeep Singh, started to go from there, the accused persons abused them. Jaggi gave a kahi blow to Jasbir Singh, which hit his right bicep. Parkash Singh gave a stick blow on the head of Mandeep Singh and he gave a soti blow on right finger of the complainant. Said Parkash Singh pushed Karamjit Kaur, due to which, she fell down and he gave soti blows on her head. Billu gave a brick blow on the stomach of the complainant. Thereafter, all the accused persons including males and females pelted stones upon the complainant and his family members, due to which, they suffered numerous injuries. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioners, *inter alia*, contends that vide

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impugned order dated 15.02.2020, learned Additional Sessions Judge, Fatehgarh Sahib committed a grave error by weighing the probative value of the evidence available on record, in the golden scale, at the time of framing of charges and adopted the approach like recording the findings of acquittal. It is further contended that learned Judicial Magistrate 1st Class, Fatehgarh Sahib, on the basis of statement of PW8 Dr. Ashok Kumar, rightly concluded that offence under Section 308 of IPC (*now Section 110 of BNS*) is made out and committed the case to learned Sessions Court, as the offence under Section 308 of IPC (*now Section 110 of BNS*) is exclusively triable by the Sessions Court. Learned Court below has rightly exercised the power under Section 216 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 239 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*].

4. Learned State counsel, assisted by learned counsel for respondents No.2 to 11, submits that at the time of framing of charge, the degree of satisfaction is required only to find out a *prima facie* case and at that stage, probable defence of the accused cannot be looked into.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that learned Additional Sessions Judge, Fatehgarh Sahib, at the time of framing of

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charges, has gone into probative value of the evidence and made observations on merits of the case and concluded that offence under Section 325 of IPC (*now Section 117(2) of BNS*) is made out qua injuries No.1 to 3 suffered by petitioner No.2 and offence under Section 308 of IPC (*now Section 110 of BNS*) is not made out.

6. A perusal of the record indicates that PW8 Dr. Ashok Kumar was examined by the prosecution, who proved the medical record regarding the injuries suffered by petitioner No.2 as Ex.PW8/A that frontal bone of left side of head was fractured and there is collection of blood in right sylvium. The said witness specifically deposed that injuries No.1 to 3 suffered by petitioner No.2 are grievous in nature and thus, the same could have proved fatal. Perusal of ocular version of petitioner No.1 Sucha Singh also indicates that respondent No.3 Parkash Singh gave three blows on the head of petitioner No.2 Karamjit Kaur with such force that her frontal bone was fractured. Learned Judicial Magistrate 1st Class, Fatehgarh Sahib rightly exercised the power under Section 216 of Cr.P.C. (*now Section 239 of BNSS*) and on finding that offence under Section 308 of IPC (*now Section 110 of BNS*) is made out, which is exclusively triable by learned Sessions Court, committed the case to learned Sessions Judge, Fatehgarh Sahib. However, learned Additional Sessions Judge, Fatehgarh Sahib, while passing the impugned order, was

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merely required to form a *prima facie* opinion with regard to existence of factual ingredients of the offence under Section 308 of IPC (*now Section 110 of BNS*).

7. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before learned trial Court at the time of framing of charge is well settled. Learned 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 & 240 of Cr.P.C. (*now Sections 250, 262 & 263 of BNSS*), learned 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 nature and degree of evaluation at this stage is limited to determine whether a *prima facie* case exists depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature and judgmental law on this issue, it could be safely concluded that

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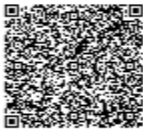


at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C. (now Sections 250, 262 & 263 of BNSS), learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record, if taken at their face value, disclose the existence of all the ingredients constituting the offence. The discharge of the accused is only permissible, when the case set up by the investigating agency in the final report filed before the trial Court under 173 of Cr.P.C. (now Section 193 of BNSS), has no basis or foundation. Learned trial Court cannot consider the probable defence of the accused in the case at this stage.

8. The Hon'ble Supreme Court *in extenso* has laid down the principles for the purpose of framing of charges in ***P. Vijayan Vs. State of Kerala, (2010) SCC 398***. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in ***State through Deputy Superintendent of Police Vs. R.Soundirarasu etc., 2023 (2) RCR (Criminal) 206***, where a two Judge Bench, speaking through Justice J.B. Pardiwala, reiterated that the primary consideration at this stage of framing of charges is the test of existence of a *prima facie* case and the probative value of the material available on record is not to be gone into.

9. In view of the aforesaid facts and circumstances of the case and ratio of law laid down by the Hon'ble Supreme Court in the cases referred to

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above, present revision petition is allowed and the impugned order dated 15.02.2020 passed by learned Additional Sessions Judge, Fatehgarh Sahib is hereby set aside.

10. Learned Additional Sessions Judge, Fatehgarh Sahib, who is seized of the matter, is directed to decide the case as expeditiously as possible, as FIR (*supra*) was registered in the year 2012.

11. All the pending miscellaneous application(s), if any, shall stand disposed of.

12. Needless to say that nothing observed in this order shall be construed as an expression of opinion by this Court on the merits of the case, lest it may prejudice the outcome of the trial.

[HARPREET SINGH BRAR]
JUDGE

10.02.2025
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No