

**CRR-1538-2018 (O&M)****-1-**

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

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**CRR-1538-2018 (O&M)
Date of Decision: 27.01.2025**

Dr. Charanjit Singh

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Gurcharan Dass, Advocate for the petitioner

Mr. Rohit Arya, Deputy Advocate General, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

This revision petition has been filed against the order dated 09.03.2018, whereby the trial Court has framed charges against the petitioner under Sections 18(c), 27(b) & 27 (d), 28 of the Drugs and Cosmetics Act, 1940, and Sections 269 & 337 of IPC.

2. As per facts apparent on record, an FIR No. 344 dated 01.12.2015, under Sections 18 & 40 of the Drugs and Cosmetics Act, 1940 (for short, 'the Act of 1940'), and 269 & 337 of IPC, was registered at Police Station Mahesh Nagar, Ambala, against the petitioner. The allegations are that on 24.11.2015 fifteen patients were operated upon for cataract at the Sarv Kalyan Charitable Hospital/Society, Manu Market, Mahesh Nagar, Ambala Cantonment. They developed post operative complications, and had to be admitted to PGIMER, Chandigarh. A team of officers constituted by the Civil Surgeon to investigate the matter reached the hospital at 01:45 PM on 01.12.2015, and searched the premises in the presence of two independent witnesses. It was found that



operation theatre had a O.T. table, drum, trolley, oxygen cylinder without any attachment and stool. No autoclave machine, no microscope, no surgical instrument, no emergency kit including injectables and i/v fluids, no surgical consumables were found, nor was there any sterilisation/autoclave or fumigation record. No culture sensitivity/swab report of O.T. was present. The impression gained by the team members was of a non-dedicated O.T. which looked more like a make-shift arrangement, and was not complying with the guidelines issued by the Government of India. Other record/medicines were also recovered from the premises of the hospital as per the list enclosed, and fourteen eye drops which had expired were also found in the premises. A list of fifteen patients, who were operated upon on 24.11.2015 and suffered post-operative infections/complications on 26.11.2015, and had to be admitted to PGIMER, Chandigarh, was also prepared. Since proper surgical/sterilisation procedure was not followed and the patients were treated in a casual and unprofessional manner, causing hurt to the operated patients in an unhygienic operation theatre which was not fit for surgery at all, the Doctor/petitioner and the Society needed to be prosecuted under provisions of law.

2.1. Pursuant to the lodging of FIR, investigation in the matter was carried out, and final report under Section 173 Cr.P.C., dated 03.02.2016, Annexure P-2, was presented before the Court, concluding that both, the doctor/petitioner and the Society, needed to be prosecuted under various provisions of law mentioned in the FIR. Despite concluding thus, the final report showed only the petitioner as the accused to be charge-sheeted.

2.2. The trial Court after hearing arguments on framing of charge passed the impugned order, dated 09.03.2018, which reads as under:



Arguments heard on charge. A prima-facie case U/Ss. 18C/27(b) & 27(d), 28 of the Drugs and Cosmetics Act, 1940 and 269 and 337 of the IPC is made out against the accused. Accordingly, accused be charge-sheeted u/ss 18C/27(b) & 27(d), 28 of the Drugs and Cosmetics Act, 1940 and 269 and 337 of the IPC.

3. In this factual background, learned counsel for the petitioner contends that the impugned order is non-speaking, and it does not show any application of mind by the trial Court while framing the charges. None of the arguments advanced by the petitioner has been discussed in the order, though it records that the arguments have been heard. It is further contended that the offences alleged against the petitioner are not even *prima facie* made out, nor have provisions under Sections 18(c), 27(b) & 27(d), 28 of the Act of 1940 been attracted against him, as the same essentially pertain to prohibition on manufacturing and sale of certain drugs and cosmetics, etc., and penalty for manufacture, sale of drugs or cosmetics in contravention of Section 26 A. Even as per the allegations, the petitioner has only shown professional negligence in conducting the operation. Further, it is contended that he has been implicated in the case for extraneous reasons on a complaint received from the State Health Minister, as has been mentioned in the FIR itself. The petitioner himself is a political person, and was an active member of a political party/Aam Aadmi Party at the relevant time. At present, he is a Member of Legislative Assembly of the State of Punjab. Still further, learned counsel contends that offences under Sections 269 and 337 of IPC are also not made out against the petitioner, nor has any allegation pertaining to the said offences been levelled against him.



under Section 32 of the Act of 1940 was also not followed before instituting prosecution against the petitioner, as the complaint against him was not lodged by the authorised person. Besides, none of the patients has lodged any complaint against the petitioner which shows they are not the aggrieved against him in any manner.

4. Learned State counsel, on the contrary, has referred to the reply by way of affidavit filed on behalf of the State, to contend that the FIR was lodged pursuant to inspection of the premises by a team of officers constituted by the Civil Surgeon, which established negligence of the petitioner as fifteen of the patients operated upon by him on 24.11.2015 had developed post-operative infections two days thereafter, and were admitted in a hospital at Chandigarh; expired medicines had been recovered in the search, which also established the negligence.

5. Heard.

6. A perusal of the impugned order fails to show any application of mind by the trial Court before passing the same; the order does not record any reason at all as to how the offences alleged are made out against the accused requiring the charges to be framed. Despite recording that arguments on framing of charge were addressed by the counsel, none has been recorded or dealt with by the trial Court. The order has been casually passed as even the name of the accused has been wrongly mentioned as Amit Kumar. As per settled law, such an order is required to indicate application of mind by the Court depicting that the offences alleged are *prima facie* made out against the accused. A refence in this regard can be made to the law laid down by the Supreme Court in *Pushpendra Kumar Sinha v. State of Jharkhand*, (2023) 11



27. It is a well-settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the court must apply its judicial mind to the material placed on record and must be satisfied that the commission of offence by the accused was possible. Indeed, the court has limited scope of enquiry and has to see whether any *prima facie* case against the accused is made out or not. At the same time, the court is also not expected to mirror the prosecution story, but to consider the broad probabilities of the case, weight of *prima facie* evidence, documents produced and any basic infirmities, etc. In this regard the judgment of *Union of India v. Prafulla Kumar Samal* can be profitably referred for ready reference.

7. Keeping in view the facts aforementioned, the petition is allowed and the impugned order, dated 09.03.2018, framing the charges is hereby set aside. The trial Court is directed to pass a fresh order in accordance with law after hearing the parties.

8. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

27.01.2025
Payal

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