

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-63723-2024

Date of Decision: 23.01.2025

Lakhwinder Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Singh Jawandha, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed by the petitioner with a prayer to quash the FIR No.183 dated 08.08.2020 (Annexure P1) under Sections 353/186/506 IPC registered at Police Station Sadar Nabha, District Patiala; report dated 23.02.2022 (Annexure P2) under Section 173 CrPC; and chargesheet dated 18.01.2023 (Annexure P3) and all consequential proceedings arising therefrom qua the petitioner.

(2). Learned counsel for the petitioner submits that in pursuance to the FIR, the prosecution filed challan on 20.08.2022 and thereafter charges were framed against the petitioner to which he pleaded not guilty. It is further submitted that the petitioner filed an application under Section 239 CrPC to drop proceedings against him and to discharge him from all the charges on the ground that the charges ought not to have been framed against him for the reason that the complaint in writing was not filed by the complainant Deepak Mattu directly in Court as per provisions of Section 195 CrPC. He then submits that the trial court vide order dated 11.07.2024

dismissed the above-said application under Section 239 CrPC without applying its judicious mind and appreciating the settled proposition of law.

(3). It is then urged that the FIR has been registered against the petitioner under Section 186/353/506 IPC on the statement of respondent No.2 Deepak Mattu whereas, the said respondent No.2 did not make any complaint in compliance of Section 195 CrPC and that apart, the filing of challan after due investigation by the police would not amount to filing of complaint in writing by the public servant as has been held by this Court in **Jeet Kumar vs. State of Punjab, 1987 Shimla Law Journal, 156.**

(4). It is contended that it is well settled that in a given case, several offences cannot be split and if it so done, the Court is not entitled to take cognizance of offence under Section 332 IPC and as such, the petitioner cannot be convicted as the trial court lapses the jurisdiction to take cognizance of the offence and in such circumstances, the entire proceedings will be an exercise in futility.

(5). Heard learned counsel for the petitioner

(6). The petitioner had earlier filed CRR-2022-2024 challenging the order dated 11.07.2024 vide which the application under Section 239 CrPC was dismissed. Since the order of framing charges against the petitioner had not been explicitly challenged, the said revision petition was dismissed with liberty to file afresh petition. Thereafter also, the petitioner filed CRM-M-57094-2024 seeking to quash the FIR, in question in the present petition. The said petition was dismissed as not maintainable because the order of framing of charges was still not challenged, however, granting liberty to the petitioner to challenge the order of framing of charges.

(7). This is the second petition seeking to quash the FIR, besides impugning the charge-sheet dated 18.01.2023 (Annexure P3). As can be seen from a perusal of the challan (Annexure P2) that the instant FIR has culminated on the basis of the complaint made by Punjab State Power Corp. Ltd. through its Assistant Engineer with the allegation that the petitioner was involved in obstructing the official work during the checking of electricity theft, misbehaved and manhandled with the staff and as such interfered in the government work. The trial court framed the charges vide order dated 18.01.2023 and thereafter, as many as 3 prosecution witnesses out of total 10 PWs have been examined till date.

(8). It appears that the witnesses are appearing for their cross-examination, however, on the repeated requests of the petitioner, the case is being deferred on one pretext or the other. On framing of charges, the trial court has already taken the cognizance and it was for this reason, the trial court dismissed his application under Section 239 CrPC as no ground was found to have been made out for discharge of the petitioner and dropping proceedings against him. It is but natural that after the framing of charges, the petitioner is at liberty to plead his case in defence evidence or at the time of final arguments and if there is any material evidence in his favour, he can come out clean of all the allegations.

(9). Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 353 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry and after the framing of charges, if the

accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in the Code, to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused.

(10). In **Anand Kumar Mohatta vs State (Govt. Of Nct Of Delhi) Department, (2019) 11 SCC 706**, the Supreme Court held that the High Court under Section 482 Cr. PC. (now, Section 528 BNSS) retains the power to quash an FIR, even after charge-sheet under Section 173(2) CrPC [now, Section 193(3) BNSS] thereof is filed, provided a satisfaction is reached, inter alia, that either the FIR and the charge-sheet read together, even accepted as true and correct without rebuttal, do not disclose the commission of any offence or that continuation of proceedings arising out of such an FIR would in fact be an abuse of the process of law as well as of the Court given the peculiar circumstances of each particular case.

(11). In **Captain Manjit Singh Viridi (Retd.) vs Hussain Mohammed Shattaf & Ors. (2023) 6 SCR 469**, the Apex Court observed that truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court.

(12). The Supreme Court in case **State of Tamilnadu Represented by the Inspector of Police Vigilance and Anti corruption Vs. N.Suresh Rajan, 2014(11) SCC 709**, observed that at the Stage of consideration of an application for discharge, the Court has to proceed with an assumption

that the materials brought on record by prosecution are true and to evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the offence. The relevant extract of the said judgment is reproduced as under:-

“...At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

(13). In **Rukmani Narvekar vs. Vijay Sataredkar & Ors. (2008) 14 SCC 1**, the Apex Court held that the Courts are not bound to consider the defence and its material, at the stage of quashment of FIR and only in a very rare and exceptional case, the defence or its material can be considered. On facts, the present case does not fall in the category of rare and exceptional case. In the present case, the charge-sheet has been filed and charges have been framed by the trial Court and evidence of most of the prime witnesses has already been recorded. This Court refrains itself from analyzing the testimony of witnesses, defence and material under inherent jurisdiction.

(14). In the present case upon going through the FIR, this Court finds the respondent No.2 has made specific allegations that the petitioner

prevented and obstructed the public servants including respondent No.2 from discharging their official duty punishable under Section 353 IPC and also torned the visitor register and criminally intimated and threatened the officials to kill them attracting penal provisions punishable under Sections 186 and 506 IPC.

(15). Taking into consideration the facts of the instant petition, this Court is of the considered view that the FIR and the criminal proceedings in relation thereto, cannot be quashed without any material and cogent evidence contradicting the stand of the prosecution.

(16). Dismissed.

(17). Anything stated hereinabove, shall have no bearing on the merits of the case before the trial court.

23.01.2025
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No