

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

CRM-M-32607-2017 (O&M)

Date of decision : 30.11.2022

JASWINDER SINGH & ANR.

... Petitioners

Versus

STATE OF PUNJAB & ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arun Jindal, Advocate for the petitioners.

Ms. Ramta Choudhary, DAG, Punjab.

None for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

CRM-20063-2022

The present application has been filed by the applicants-petitioners for placing on record the challan dated 02.07.2017 (Annexure P-5).

For the reasons mentioned in the application, the same is allowed and the challan dated 02.07.2017 (Annexure P-5) is taken on record.

CRM-M-32607-2017

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the FIR No.108 dated 30.07.2016 (Annexure P-1) registered under Sections 406/420 IPC at Police Station Amloh, District Fatehgarh Sahib and all subsequent proceedings arising therefrom.

2. The brief facts/allegations as emanating from the pleadings, FIR No.108 dated 30.07.2016 (Annexure P-1) and the report under Section 173(2) Cr.P.C. (Annexure P-5) are that the complainant wanted

to purchase 15 acres of land at the rate of Rs.12 lakhs per acre. The petitioners collected a sum of Rs.50 lakhs from the complainant/respondent No.2 from time to time in the presence of Inderjit Singh and Manjit Singh, Namberdar of Village Soti. However, petitioner No.1 purchased land measuring 09 kanals 13 marlas only vide Sale Deed dated 25.04.2013 (Annexure P-3) in the name of the complainant/respondent No.2 and stood in the place of the purchaser i.e. the complainant/respondent No.2 at the time when the photograph was taken for the purposes of execution of the sale deed. Petitioner No.1 neither purchased the rest of the land nor returned the money to the complainant/respondent No.2 leading to the registration of the FIR and the subsequent report under Section 173(2) Cr.P.C.

3. The learned counsel for the petitioners contend that the allegations as levelled against the petitioners are baseless. So far as petitioner No.2 is concerned, she is a housewife and not doing any business whatsoever. No specific role has been assigned to her and she has been named just to put pressure on her husband i.e. petitioner No.1.

The complainant/respondent No.2-Gurwant Singh has concocted a false story by concealing the true facts. In fact, he had purchased land measuring 43 kanals 9.5/6 marlas at village Gobindgarh vide Sale Deed dated 16.04.2013 for a consideration of Rs.65,25,000/- from Amarjit Kaur. In this sale deed, petitioner No.1 was a witness and the complainant/respondent No.2-Gurwant Singh signed as a purchaser. There was no dispute with regard to this sale deed. The copy of the said sale deed is annexed as Annexure P-2 to the petition.

The subsequent sale deed for land measuring 09 kanals 13 marlas dated 25.04.2013 for a consideration of Rs.14,50,000/- was executed in the name of the complainant/respondent No.2-Gurwant Singh. The copy of the said sale deed is annexed as Annexure P-3 to the petition. He contends that both the sale deeds are intact and in the name of the complainant/respondent No.2 and the mutation has also been sanctioned in his favour. As such, no offence whatsoever has been committed by either of the petitioners.

It is his contention that in fact, the complainant/respondent No.2 had filed earlier application dated 14.09.2015, which was subsequently withdrawn and the allegation in the said application were different from those levelled in the present application leading to the registration of the present FIR. The copy of the application is annexed as Annexure P-4 to the petition.

It is his further contention that taking the allegations to be true, the sale deed in question admittedly executed in favour of the complainant/respondent No.2 was dated 25.04.2013 and the present complaint was dated 29.04.2016. Thus, there was considerable delay in the registration of the present FIR. Even otherwise, he reiterates that so far as petitioner No.2 is concerned, she has absolutely no role to play in the occurrence.

It is his contention that the allegations taken at their face value would amount to a civil dispute and no criminal offence was made out.

4. A reply dated 17.04.2018 has been filed on behalf of the respondent No.1-State by way of an affidavit of Manpreet Singh, PPS,

Deputy Superintendent of Police, Sub Division Amloh, District Fatehgarh Sahib, which is already on record. The learned State counsel while referring to the reply contends that as per the investigation conducted, both the petitioners were liable. The money was paid to both the petitioners by the complainant in the presence of two independent witnesses namely, Inderjit Singh and Manjit Singh, Nambardar.

The Sale Deed dated 16.04.2013 (Annexure P-2) allegedly executed in favour of respondent No.2 has been denied by him. The complainant/respondent No.2 during the course of investigation stated that he had no knowledge of the same. He contends that the argument raised that the matter would, at best, give rise to a civil dispute is fallacious. As per the investigation, an offence under Sections 406/420 IPC is clearly made out. Even otherwise, civil proceedings and criminal proceedings can proceed simultaneously. Since the charge had already been framed and 02 out of the 11 prosecution witnesses had examined, the present petition was liable to be dismissed as the Courts cannot adjudicate upon disputed questions of fact, moreso, when the evidence has begun to be recorded.

5. Despite service none has put in appearance on behalf of the complainant/respondent No.2.

6. I have heard the learned counsel for the parties at length.

7. Before proceeding further in the matter, it would be apposite to examine some of the judgments of the Hon'ble Supreme Court on Section 482 Cr.P.C.

In State of Delhi Versus Gyan Devi, 2000(4) R.C.R.

(Criminal) 517, it was held as under:-

*“7. In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the Court is to examine the materials only with a view to be satisfied that a *prima facie* case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Criminal Procedure Code, 1973 seeking for the quashing of charged framed against them the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.”*

*8. In this connection we may refer to the case of *Radhey Shyam v. Kunj Behari & Ors. etc. etc.*, 1989 Suppl.(2) SCC 572, in which a bench of three learned Judge of this Court referring to the decision in *Mohd. Akbar Dar & Ors. v. State of Jammu and Kashmir & Ors.*, 1981 Supp SCC 80, pointed out that at the stage of framing of charges meticulous consideration of evidence and*

materials by the Court is not required. This Court further observed :

"The High Court has also deemed it necessary to quash the charge against respondents 1 to 3 because in its opinion the evidence proposed to be adduced by the prosecution, even if fully accepted, cannot show that respondent 1 to 3 committed any offence and referred in that behalf to the decision in State of Bihar v. Ramesh Singh, (1977)4 SCC 39. We find that the High Court's conclusion about the inadequacy of the evidence against respondents 1 to 3, besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based.

We, therefore, find that there was no warrant for the High Court to quash the charge against respondents 1 to 3 in exercise of its powers under Section 482 Criminal Procedure Code, 1973".

9. *In the case of Minakshi Bala V. Sudhir & Ors., 1994(3) RCR (Criminal) 123 (SC) : (1994)4 SCC 142, this Court considered the question of quashing of charge by the High Court in invoking its inherent jurisdiction under Section 482 Criminal Procedure Code, 1973 In that context, this Court made the following pertinent observations :*

"...To put it differently, once charges are framed under Section 240 Criminal Procedure Code, 1973 the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in sections 239 and 240 Criminal Procedure Code, 1973; nor would it be justified in invoking its inherent jurisdiction under Section 482 Criminal Procedure Code, 1973 to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such

exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of advertting to and confining its attention to the documents referred to in sections 239 and 240 Criminal Procedure Code, 1973 the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial Court to delve into and decide upon the respective merits of the case."

10. *In a recent decision in State of M.P. v. S.B. Johari & Ors., 2000(1) RCR (Criminal) 523 (SC) : 2000(2) SCC 57, this Court, advertting to the question of quashing of charges in the light of the provisions contained in Sections 227 and 288, 401 and 397 and 482 Criminal Procedure Code did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. This Court, while quashing and setting aside the order passed by the High Court, made the following observations :*

"...After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced

on record. The same is challenged by filing these appeals.

*In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the *prima facie* case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial."*

Judged in the light of the settled position of law as reiterated in the decisions noted above, the order under challenge in the present case does not stand the scrutiny. The High Court has erred in its approach to the case as if it was evaluating the medical evidence for the purpose of determining the question whether the charge under Section 304/34 Indian Penal Code framed against the accused respondents 1 and 2 was likely to succeed or not. This question was to be considered by the trial Judge after recording the entire evidence in the case. It was not for the High Court to pre-judge the case at the

stage when only a few witnesses (doctors) had been examined by the prosecution and that too under the direction of the High Court in the revision petition filed by the accused. The High Court has not observed that the prosecution had closed the evidence from its side. There is also no discussion or observation in the impugned order that the facts and circumstances of the case make it an exceptional case in which immediate interference of the High Court by invoking its inherent jurisdiction under Section 482 Criminal Procedure Code, 1973 is warranted in the interest of justice. On consideration of the matter we have no hesitation to hold that the order under challenge is vitiated on account of erroneous approach of the High Court and it is clearly unsustainable.

[Emphasis supplied]

In *Ashfaq Ahmed Quereshi and another Versus Namrata Chopra and others, 2014(1) R.C.R. (Criminal) 528*, held as under:-

“5. As the case raises a large number of disputed questions of fact, we are of the considered opinion that there was no occasion for the High Court to allow the petition under Section 482 Cr.P.C. and quash the criminal proceedings qua the said respondents.”

[Emphasis supplied]

In *M. Gurunathan Versus State of R. Amutha, 2005(13) SCC58*

“3. The High Court, by the impugned judgement and order, has quashed the proceedings in C.C. No. 421 of 2002 arising out of the aforesaid complaint. The only ground on which the proceedings have been quashed is that the complaint was not filed within the stipulated period upon the dishonour of the cheque on the first occasion. For more than one reasons, the impugned judgement and order deserves to be reversed. Firstly,

no such ground seems to have been taken by the respondent in the petition filed under section 482 of the Code; and secondly, according to the appellant, the statutory notice of dishonour of the cheque was given only once, i.e., the notice dated 5th November, 2002, whereafter the complaint was filed within the period stipulated in law. Neither in these proceedings nor in the petition filed under section 482 of the Code has any ground been raised in support of the prayer for quashing the proceedings. Be that as it may, if any defence on facts has to be raised, it could not be made a ground for quashing the proceedings, being a disputed question of fact.”

[Emphasis supplied]

In Zandu Pharmaceuticals Works Ltd. and others Versus

Mohd. Sharaful Haque and another, (200)1 SCC 122, held as under:-

*“As noted above, the powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.”*

[Emphasis supplied]

8. A perusal of the aforementioned judgments (supra) would establish that the powers under Section 482 Cr.P.C. are not to be resorted to in order to stifle a legitimate prosecution, moreso, when the charges have been framed and the recording of the prosecution evidence has begun. While adjudicating upon a petition under Section 482 Cr.P.C., the Court should not meticulously examine the material on record for coming to the conclusion that no offence was made out. Once the Trial Court has framed charges against an accused, the Trial must proceed without unnecessary interference by a superior Court. Any attempt by an accused for quashing of an order framing charges before the entire prosecution evidence has come on record should not be entertained except in exceptional circumstances. Further, disputed questions of fact are not to be adjudicated upon in a petition under Section 482 Cr.P.C.

9. Coming back to the facts of the present case, it may be pointed out that the report under Section 173 Cr.P.C. was filed after which the charges came to be framed and as many as 02 prosecution witnesses out of 11 already stand examined. The arguments raised by the counsel for the petitioners are disputed in the reply filed by the State as also the submissions made by the learned State counsel. Even otherwise, the defence of the accused as set out in the petition as also in the arguments of the counsel for the petitioners cannot be examined in a petition under Section 482 Cr.P.C. For the purposes of quashing proceedings under Section 482 Cr.P.C., the FIR and the report under Section 173 Cr.P.C. must disclose the commission of absolutely no offence whatsoever. In the alternative, if there is a statutory bar to the initiation of proceedings, the Court may be in a position to entertain and

quash proceedings invoking the inherent powers under Section 482 Cr.P.C. However, in the present case that is not so. The entire case of the petitioners is factual and as has already been mentioned hereinabove disputed questions of fact cannot be adjudicated upon in a petition under Section 482 Cr.P.C.

10. In view of the above, I find no merit in the present petition. Therefore, the same is hereby dismissed.

11. However, the observations made in this order are only for the purposes of adjudication of the present petition and the Trial Court is free to decide the matter in accordance with law without being influenced by any observations made in the present order.

**(JASJIT SINGH BEDI)
JUDGE**

30.11.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No