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

**CRR-280-2021 (O&M)
Date of decision: 13.01.2025**

Surat Singh and others

...Petitioners

Vs.

State of Haryana and another

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Panwar, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Ravi Malik, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. Present revision petition has been preferred against the order dated 08.02.2021 passed by learned Additional Sessions Judge, Panipat, vide which the petitioners were chargesheeted under Sections 148, 325 & 379-B of the Indian Penal Code, 1860 (for short 'IPC') read with Section 149 of IPC [now Sections 191(3), 117(2) & 304 of the Bharatiya Nyaya Sanhita, 2023



(for short 'BNS') read with Section 190 of BNS].

2. Brief facts of the case are that FIR (*supra*) was registered at the instance of respondent No.2 Nayab Singh on the allegations that when his wife Shukantla Devi and his daughter Nisha were sitting on chair in front of their house, then wife of Nahar Singh and four other ladies gave beatings to both of them and they snatched right ear ring and gold chain of wife of complainant. After coming to know about the incident, the complainant informed the police station on 15.03.2017 at about 11.00 a.m. Earlier also, accused Nahar Singh, his wife wife and two boys namely Sachin and Manish threatened them to kill. After giving the complaint to the police, the complainant came to home and when he was talking with the person, who came to know about the incident, then on ringing the door bell, his daughter ran towards the gate to open and she was pulled out. Thereafter, the complainant ran towards the gate, where Surat Singh, his wife and four to five boys carrying iron rods, dandas in their hands, were already present and they attacked him, his wife, his daughter and his nephew Jaydeep with iron rods and dandas. The complainant fell down after suffering an iron rod blow on his head and mouth. The accused persons ran away from the spot and they also seized revolver of the complainant along with five live cartridges. Thereafter, the complainant side went to Civil Hospital, Samalkha for treatment and from there, they were referred to Khanpur Medical. After treatment, the



complainant, his wife and his daughter were discharged, however, due to serious injuries, his nephew Jaydeep was referred to PGI, Rohtak. With these allegations, FIR (*supra*) was registered.

3. Learned counsel for the petitioners, *inter alia*, contends that initially, the investigating agency deleted Section 379-B of IPC (*now Section 304 of BNS*). However, the matter was entrusted to some other Investigating Officer and offence under Section 379-B of IPC (*now Section 304 of BNS*) was again added without any justifiable material available on record to indicate complicity of the petitioners and final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 193 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] was presented and learned trial Court framed the charges against the petitioners vide impugned order dated 08.02.2021 in a mechanical manner and it had not considered the fact that Section 379-B of IPC (*now Section 304 of BNS*) was deleted on 23.03.2017 during the investigation by Inspector Narender Singh and verification by DSP Dalbir Singh. Learned counsel for the petitioners refers to photograph of the alleged incident (Annexure P-2), in which petitioner No.1, who was armed with a revolver, can be seen grappling with the complainant. Further, he snatched the revolver in his self-defence and thereafter, deposited the same before the jurisdictional police authorities. Learned counsel for the petitioners relies upon judgment of the Hon'ble



Supreme Court in *Mohar Singh and others Vs. State of Rajasthan, 1981 Supreme Court Cases (Cri) 552* and submits that the Hon'ble Supreme Court acquitted the accused, who was accused of snatching the revolver from the member of complainant-party to prevent further bloodshed and surrendered the weapon to the police at the earliest. In the said judgment, the Hon'ble Supreme Court held that the accused had no intention to steal. As such, in view of similar facts, present petition deserves to be allowed and the impugned order to the extent of framing of charge under Section 379-B of IPC (*now Section 304 of BNS*) may be set aside.

4. *Per contra*, learned State counsel, assisted by learned counsel for respondent No.2, 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. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

6. 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 at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C, the 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. has no basis or foundation. The trial Court cannot consider the probable defence of the accused in the case at this stage.

7. 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.

8. 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 above, present revision petition is dismissed being devoid of merit.

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

10. 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.

13.01.2025
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[HARPREET SINGH BRAR]
JUDGE

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