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

CRM-M-6088-2024 (O&M)

Reserved on : 03.03.2025

Pronounced on : 05.03.2025

Jasvir Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Akshay Chadha, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 23.01.2024 (Annexure P-10), whereby the criminal revision bearing number **CRR-342-2019**, filed by the petitioner against the order of framing charge dated 17.12.2018 (Annexure P-6) under Sections 408 and 120-B of IPC in case arising out of FIR No. 112 dated 05.06.2014, registered under the aforesaid sections at Police Station Division No. 5, Police Commissionerate Ludhiana, had been dismissed by the Court of learned Additional Sessions Judge, Ludhiana and also for quashing of order dated 06.04.2018 (Annexure P-4), whereby the petitioner had been summoned to face trial as an additional accused under Section 319 of Cr.P.C.

2. Brief facts of the case relevant for the disposal of the present case are that the aforementioned FIR was registered on the basis of a complaint lodged by complainant Suresh Sharma, Territory Head of CMS Info Systems

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Pvt. Ltd., which was a cash management company, whose operation involved cash filling in ATMs, cash deposit for various customers and cash operations beyond banking hours. It was based at Mumbai and was having its own vault at Ludhiana. It was alleged that due to the nature of the operations, cash amount used to be retained in the vault of the company beyond banking hours. This vault was operated by two Vault Officers. One of the vault officers informed about shortage of cash in the vault to the extent of amount of Rs. 83,84,447/-. The matter was inquired into and it was revealed that the petitioner and co-accused Amritpal Singh, who used to collect cash and then to deposit it with co-accused Amandeep Singh, hatched a conspiracy with other co-accused and embezzled the aforementioned amount. Investigation proceedings were initiated. Co-accused Amandeep Singh, Vikram Singh and Amritpal Singh were arrested. Recovery of some of the embezzled amount of money was effected from them. The petitioner was found to be innocent and had not been arrested and challaned. Challan was presented against Amritpal Singh, Vikram Singh and Manoj Kumar. Charges under Section 408 read with Section 120-B of IPC were framed against them.

3. As per the allegations, during the course of trial, the prosecution examined two witnesses, namely PW-1 Jaswinder Singh and PW-2 Suresh Sharma i.e. the complainant. Thereafter, an application under Section 319 of Cr.P.C. was moved by the prosecution, which was allowed, vide order dated 06.04.2018 and the present petitioner was arraigned as an additional accused. An application for discharge, as moved by the petitioner, was dismissed, vide order dated 14.11.2019. Charges were framed against the petitioner and co-accused on 17.12.2018. The petitioner filed the aforesaid revision as

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mentioned in paragraph No. 1 against the order dated 17.12.2018, which was dismissed by the Court of learned Additional Sessions Judge, Ludhiana, vide impugned order dated 23.01.2024. Feeling aggrieved, the present petition has been filed.

4. At the very outset, learned counsel for the petitioner has restricted his arguments only to the extent of quashing the order dated 17.12.2018, whereby charges were framed against him.

5. Learned counsel for the petitioner has argued that on an application, moved by the brother of the petitioner, namely Jagmohan Singh, a detailed inquiry was conducted by the police and the petitioner was found to be innocent. A petition filed by respondent No. 2/complainant for including the name of the petitioner as an accused had been dismissed, vide order dated 13.05.2015. The police, after conducting a detailed inquiry/investigation, came to the conclusion that the complicity of the petitioner in the subject offence had not been made out. The services of the petitioner had been terminated on 26.05.2024. He was never the custodian of the vault and was merely working as a cash collector. He could not have any hand in embezzlement of any amount of money. On the alleged date of occurrence i.e. 04.06.2014, the vault was single handedly operated twice by co-accused Manoj Kumar. The CCTV footage of the camera installed at the place of occurrence did not show the presence of the petitioner at all. The evidence collected during investigation was not of such nature which could be *prima facie* stated to be sufficient to proceed against him. The learned trial Court did not take all these points into consideration while passing the impugned order framing charge. It has further been argued by learned counsel for the

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petitioner that in view of the aforesaid circumstances, no charges under Section 408 read with Section 120-B of IPC could have been framed against him. Hence, it has been urged that order dated 17.12.2018, thereby framing charges against him, is not sustainable and is liable to be set aside.

6. *Per contra*, learned State counsel has argued that there is no illegality or infirmity in the impugned order. There was *prima facie* case on record to prove that the petitioner by hatching conspiracy with other co-accused had embezzled the aforesaid amount of the complainant, which was entrusted to them. At that stage, the trial Court was required to consider the broad probabilities of the case and not to conduct a mini trial and as such, the order framing charges against the petitioner did not warrant any interference by this Court and deserves to be upheld. It is, thus, urged that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

8. Before delving into the correctness of the order whereby the learned trial Court had passed order for framing charges under Sections 408 read with Section 120-B of IPC against the petitioner, this Court considers it necessary to reiterate the well settled proposition of law pertaining to the framing of charges and the scope of this Court to interfere.

9. In this context, reference can firstly be made to a celebrated pronouncement of Hon'ble Supreme Court cited as '*Union of India Vs. Prafulla Kumar Samel, (1979) 3 SCC 4*' wherein the following principles had been laid down while dealing with the question of discharge under Section

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227 of Cr.P.C. or framing of charge under Section 228 of Cr.P.C. The relevant para is reproduced as under:-

10. “Thus, on a consideration of the authorities mentioned above, the following principles emerge:

1. That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4. That in exercising his jurisdiction under Section 227 of the Code, the Judge, which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

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10. Reliance can also be placed upon '*Sajjan Kumar Vs. CBI, (2010) 9 SCC 368,*' wherein the Hon'ble Supreme Court had considered the powers of Courts in respect of framing of charge and discharge and the fact that a *prima facie* case would depend upon the facts and circumstances of each case and had laid down the following principles:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie cases would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond

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reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”.

11. It has been held time and again by the Hon’ble Supreme Court that at the stage of framing of charges, the Court possesses the power to sift and weigh the evidence for the limited purpose of ascertaining whether or not a *prima facie* case has been made out against the accused. The trial Court must exercise its judicial mind to the facts of the case before arriving at a conclusion that there is sufficient ground for proceeding against the accused. It has been observed that such exercise must be undertaken so as to ensure that an individual does not have to be put through the rigors of the criminal

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judicial system for no fault of his. The sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame charge against him. Reference in this regard can also be had to the observations made by Apex Court in '*P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398*' and '*Vishnu Kumar Shukla and another Vs. State of Uttarpradesh and another, AIR 2024, Supreme Court 90*'.

12. Recently, in a case cited as '*Shashikant Sharma and others Vs. State of Uttar Pradesh and another 2024(1) RCR (Criminal) 67*', the Hon'ble Supreme Court observed that if from the admitted evidence of the prosecution, as reflected in the documents filed by the investigating officer in the report under Section 173 Cr.P.C., the necessary ingredients of an offence are not made out, then the Court is not obliged to frame charge for such offence against the accused.

13. The ratio of law as laid down in the above cited authorities is that while framing of charge, the very foundation of formation of opinion is that as to whether there is sufficient material on record to '*prima facie*' make out a case of commission of an offence. The word *prima facie* when used in terms of *prima facie* view as far as consideration on the point of framing charge is concerned, would certainly means there being enough material for substance which would give rise to strong suspicion against the accused and holding of a view in favour of the prosecution.

14. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case, it is noticed that as per

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the allegations, the petitioner, in conspiracy with other co-accused, had embezzled an amount of Rs. 83,84,447/- of the complainant's company. Although, the petitioner was initially found to be innocent by the police, however, on allowing an application filed by the prosecution under Section 319 of Cr.P.C., he had been summoned as an additional accused to face trial. While passing the said order, the learned trial Court has recorded sufficient and cogent reasoning to arrive at a conclusion that a *prima facie* case under Section 408 read with Section 120-B of IPC was made out against him. What the Court has to see is whether the petitioner, being a servant or employee and being in any manner entrusted in such capacity with property, or with any dominion over property of the complainant, has committed any criminal breach of trust in respect of that property or not. Keeping in view the nature of allegations and the evidence coming forth on record, it cannot be held at the stage of framing of charge that there was no sufficient ground for proceeding against the petitioner/accused under Section 408 read with Section 120-B of IPC.

15. As discussed above, the trial Court is competent to frame charge even upon a grave suspicion of commission of offence. The trial Court formed a *prima facie* opinion that there was sufficient ground to put the petitioner and co-accused to trial for the charges framed under Sections 408 read with Section 120-B of IPC and it was not for the trial Court to form an opinion that material collected during investigation, if proved, during trial would be sufficient to convict the accused for the said charges or not.

16. Accordingly, on considering the rival submissions of both the parties, material placed on record and on overall assessment of the facts and

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circumstances of the case, in my considered opinion, no illegality, infirmity or perversity is found either in the order dated 17.12.2018, thereby framing charges against the petitioner and co-accused under the aforesaid sections nor in the order dated 23.01.2024, whereby the revision filed by the petitioner challenging the order dated 17.12.2018 had been dismissed by the learned Additional Sessions Judge, Ludhiana. Hence, the same are upheld. Resultantly, the present petition is dismissed being devoid of any merit.

05.03.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes**Whether reportable**Yes*