

(2011) 08 P&H CK 0269

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-24292 of 2011 (O and M)

Bhupinder Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190, 227, 228, 482
- Penal Code, 1860 (IPC) - Section 120B, 201, 409

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This petition u/s 482 of the Code of Criminal Procedure has been filed with a prayer for quashing of FIR No.305 dated 8.8.2001 under Sections 409, 201 and 120-B IPC, the summoning order dated 29.3.2006 and order dated 4.4.2009 passed by the Addl. Chief Judicial Magistrate, Ferozepur charging the petitioner for commission of the aforesaid offences as also the order dated 16.5.2011 vide which the revision preferred by the petitioner against the order of framing charge has been dismissed.

2. Briefly noticing the facts it transpires that a complaint was made by the D.T.O., Ferozepur to DSP, Sub-Division, Ferozepur and FIR No.305 dated 8.8.2001 came into existence. In this FIR the petitioner as well as Amarjit Singh, Indu Behal and Surinder Kumar were arrayed as the persons whose complicity was suspected for causing the loss of cash book of traffic checking (compensation fee) for Rs.1,13,950/-which had not been deposited with the Government Treasury by the said persons. The embezzlement was detected during the annual audit by the auditors of Accountant General, Punjab. Initially when the challan was submitted the name of the petitioner was not mentioned in the array of the accused persons. Subsequently, the court applied its mind upon an application having been preferred u/s 190 of the Code and

found sufficient material against the petitioner to summon him to stand trial. The order was passed on 29.3.2006. The petitioner submitted himself to this order. Thereafter, at appropriate stage the Court of Addl. Chief Judicial Magistrate framed the charge against the petitioner vide order dated 4.4.2009 against which the petitioner preferred a revision petition which has been declined on 16.5.2011 prompting him to file the instant petition.

3. Learned counsel for the petitioner contends that the order passed by the Addl. Chief Judicial Magistrate itself was erroneous as it discharged the prime accused Surinder Kumar. The petitioner was not even involved in the embezzlement for which he has been unnecessarily charged. Further contends that the revision has also been erroneously declined by adopting a faulty reasoning that merely because the petitioner has not challenged the summoning order, this was sufficient to sustain the order of framing of charge against him.

4. I have considered the arguments raised before me. The petitioner has been summoned and made to face the trial pursuant to an application moved u/s 190 of the Code. The court prima facie found the petitioner to have come in the zone of suspicion and charged him appropriately. The revisional court did likewise.

5. It is a settled proposition of law that u/s 228 of the Code when the court embarks to evaluate the material which has been collected by the prosecution, it has merely to see whether a prima facie case exists against a person or not to force him to face the trial. The court at that stage of the proceedings is not required to sift the entire material and to evaluate it so as to ascertain whether such material is sufficient to sustain conviction or not. The court is also not obliged to give any reason if it decides to frame a charge which is a counter distinction to the power u/s 227 Cr.P.C. where the court is obligated to give reasons if it has to come to a conclusion regarding discharge of a person from the proceedings.

6. The aforesaid proposition no longer floats in a grey area and has been substantially commented upon so as to obviate any chances of doubt.

7. In *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra*, 2008(2) R.C.R. (Cri) 896 the Hon'ble Supreme Court held as under :-

B.Criminal Procedure Code, Section 228 - Charge sheet submitted in the court - Section 228 Cr.P.C. provides that upon consideration of material on record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him - Further held :

(1) The words "not sufficient ground for proceedings against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the

prosecution - However, in assessing this fact, the Judge has the power to sift and weigh the material for limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.

(2) If two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused.

8. Having said thus, I am of the opinion that no infirmity has been committed by the courts below in framing the charge against the petitioner. Apart from this, the instant petition u/s 482 of the code which is in the nature of second revision, is also incompetent and not maintainable.

9. Dismissed.