

State of Punjab VS DEEPAK CHAWLA

Present : Ms Shikha, Ld. APP for State
Accused on bail with Sh. Harvinder Pal Adv

Heard. File perused. It is well settled law that Cr.PC gives abundant capacity to the Court to adjust and alter the charge U/s 216 Cr.PC. In the present case FIR has been registered against the accused U/s 188 of IPC. Initially notice of accusation was served upon accused U/s 188 of IPC, but from the perusal of file, offence U/s 3 of Epidemic disease Act 1897 and U/s 269 of IPC and 188 of IPC are made out against the accused. The undersigned Suo Moto exercises its power to amend/ alter notice of accusation under Cr.PC.

It has been settled by the **Hon'ble Supreme Court of India** in case titled as **Onkar Nath Mishra and others Vs. State NCT of Delhi** [2008\(1\) R.C.R.\(Criminal\) 336 : 2007\(6\) Recent Apex Judgments \(R.A.J.\) 656](#) that at the stage of framing of charge court is required to evaluate materials 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 alleged offence. At the stage of framing charge, court is not expected to go deep into probative value of the material on record, the need to be considered is whether there is ground for presuming that the offence has been committed and not a ground for convicting accused has been made out. At that stage even strong suspicion founded on material which leads

the court to form a presumptive opinion as to the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of commission of that offence. The **Hon'ble Three Judge Bench of Hon'ble Supreme Court of India** in case titled as **State of Maharashtra Vs. Som Nath Thapa and others 1996(2) RCR (Criminal) 480** after noting three points i.e. (i) Sections 227 and 228 are so far as Sessions Trial, (ii) Sections 239 and 240 relatable to trial of warrant case, (iii) Sections 245(1) and 245(2) qua trial of Summon cases, which deals with question of framing of charge or discharge stated thus ;

“if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence.”

At the stage of framing charge the court is not required to appreciate facts to conclude whether the materials produced are sufficient or not for convicting the accused. At the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at the stage of framing charge to consider in any detail and weigh in a sensitive balance whether the facts, if proved,

would be incompatible with the innocence of the accused or not. The **Hon'ble Supreme Court in case titled Kanti Bhadra Shah vs State of West Bengal 2000(1) RCR Criminal 407** has held that a Magistrate is required to record his reasons for discharging the accused but there is no need to record reasons, if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused. At the stage of framing of a charge the expression used is "**opinion**". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. Further in case **Lalu Prasad @ Lalu Prasad Yadav vs State of Bihar Through CBI (AHD) Patna 2007(1) RCR Criminal 305 Hon'ble Supreme Court** has held that a Magistrate is required to record his reasons for discharging the accused but there is no need to record reasons, if he frames charge against the accused.

Further in case **Hem Chand vs State of Jharkhand 2008(2) RCR Criminal 510 Hon'ble Supreme Court** has held that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial. From the perusal of the file. Prima facie case is made out against accused under section 269, 188 of IPC, Section 3 Epidemic Diseases Act 1897 IPC. Notice of accusation served upon accused accordingly, which was read out and explain to the accused in simple punjabi language, to which accused do not plead guilty and

claim trial. Adjourned to 2-9-2021.

Ld APP suffered statement that she has no objection if the evidence of prosecution already recorded before framing fresh charge today is read against the accused.

PW mentioned at serial no.4 be summoned for said date.

Date of order: 16-8-2021

Typed by : Vijay Kumar stenographer-III

(Lavdeep Hundal)
(SDJM),Garhshankar/16-8-2021
(UID PB 0309)