

Present: Ld. APP for the State.

Accused in person.

Dr. Ankit Gupta, Ld. Counsel for District Appropriate Authority through VC.

Sh. Lalit Kumar, nodal officer for District Appropriate Authority in person.

Sh. N K Aggarwal, Ld. Counsel for the accused through VC.

ORDER ON CHARGE

1. Ld. Counsel for the accused has contended that there is no material on record to frame charges against the accused. He argues that the offences under PC&PNDT Act are not triable on chargesheet. The complainant cannot be said to have been discharging public duty or public functions on the alleged day of incident as he was not authorised to conduct the raid in question. The requirement of having “reason to believe” in terms of section 30 of PC&PNDT Act is not satisfied in this case. No material shows that the complainant was assaulted or injured in any manner by the accused. There is no reference to Dr. Santosh in the chargesheet. The practice of using pregnant ladies as decoy patients by the authority is against the intention of PC&PNDT Act. Hence, it is prayed that accused be discharged from the present case.

2. Per contra, Ld. APP for the State has submitted that the above cannot be a ground to claim discharge and that there is sufficient material to frame charges against the accused. The purpose of PC&PNDT Act is to curb female infanticide.

The contentions raised by the accused are purely a matter of trial and evidences and it cannot be adjudicated at this stage.

3. Arguments heard. Considered. Record perused. There is no dispute on the legal position enunciated in the case laws relied upon by the parties.

4. The law regarding discharge is well settled that the court while considering the question of framing the charges 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 case would depend upon the facts of each case. 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. 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 the court was conducting a trial. 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. 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. 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 discloses the existence of all the ingredients constituting the alleged offence.

5. The observations of Apex Court on the limited power of sifting the material on record at the stage of charge, in case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat*** (2019) 16 SCC 547, are reproduced as under:

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial..."

6. It was observed in ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148 by the Apex Court that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. It was held that:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise

its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

7. On the aspect of standard of proof at the stage of charge, the Hon'ble Supreme Court in ***Bhawna Bai v. Ghanshyam*** (2020) 2 SCC 217 has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen."

8. Without delving too much into the merits of the matter and upon a prima facie consideration of material on record, it is to be noted that in the present case the chargesheet was filed by the IO for offences u/s.186/353/332/341/34 IPC and u/s.23/25 PCPNDT Act. The cognizance of above offences was taken by the court vide order dated 06.12.2019.

9. Ld. Counsel for accused had contended that the offences under PCPNDT Act are not triable on the basis of chargesheet. It is a trite law that the registration of FIR and police investigation for the offences under said Act are not barred vide judgment of Hon'ble Delhi High Court in ***Manoj Krishan Ahuja v. State of NCT of Delhi & Anr.*** CrI. M.C.1352/2023 decided on 24.04.2023. The cognizance of offence on police report has already been taken by Ld. Predecessor of the court vide order dated 06.12.2019. This court has no power to review or recall the said order. The argument regarding existence of "reason to believe" cannot be adjudged at this stage since it is a matter of evidence. The other argument regarding use of pregnant ladies as decoy patient also cannot be a ground to claim discharge.

10. The argument on behalf of authority that their complaint be prosecuted independently is without any merit as the authority itself has not chosen to challenge the order of cognizance, which has attained finality. Both the present charge-sheet and tagged complaint pertains to some set of facts as well as date of incident. The cognizance was taken in this case under the provisions of PC & PNDDT Act as well. Hence, the above submission is rejected.

11. As regards the offence u/s.186 IPC it is to be noted that there is no permission filed with the chargesheet in terms of section 195 CrPC for the prosecution of said offence u/s.186 IPC. Moreover, there is no separate complaint filed before the court disclosing commission of offence within the meaning of section 2 (d) of CrPC by the concerned public servant. Accordingly, there is non-compliance of provisions of Section 195 (1)(a)(i) of CrPC with respect to offence under section 186 IPC for want of complaint by the concerned public servant. As regards section 353 and 332 IPC it is to be noted that therein the requirement is that the public servant must be performing duty in the discharge of his public functions. The complainant Dr. Kuldeep Singh while conducting raid in Delhi cannot be said to be discharging public functions as his jurisdiction is limited to Rohtak, Haryana. Even the letter dated 17.10.2016 filed with the chargesheet does not contain any specific authorization to complainant Dr. Kuldeep Singh to conduct raid anywhere in India beyond Rohtak, Haryana. There is no other document on record which even prima facie shows that complainant was authorized to conduct raid in Delhi on the day of incident. The reference by the complainant in then complaint to the fact that he has informed the Delhi team regarding raid also prima facie shows that he was not competent to conduct raid in Delhi. Therefore, his alleged presence at the spot in Delhi cannot be said to have been “*in the discharge of his public functions*” or “*in the execution of his duty*”. Section 332

IPC also specifically requires that the concerned public servant must be performing act in the discharge of his duty or the act must be done in the “*lawful*” discharge of his duty as such public servant. As regards offence under section 341 IPC, the offence of wrongful restraint is defined under section 339 IPC. It provides that whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a “*right to proceed*”, is said wrongfully to restrain that person. As already noted above, since the presence of complainant at the spot in Delhi cannot be said to have been “in the discharge of his public functions” or “in the execution of his duty”. Hence, he cannot be said to be having *right to proceed* in the clinic of accused on the day of incident within the meaning of section 339 IPC. Even otherwise as well, the allegations of the complainant are vague and wide sweeping in nature. It is not the case of complainant that he or any of his team members suffered any injuries or assault from the hands of accused. No MLC etc. of complainant is there on record to show that there was any alleged hurt or assault on him. The statement of complainant under section 161 CrPC mentions that the raid was conducted under his supervision. There is no document filed with the chargesheet to show that the Delhi team was conducting raid in the supervision of complainant on the said day. Upon consideration of material produced alongwith chargesheet, the complainant cannot be said to have been performing lawful duty as a public servant on the spot on that day. The material on record is not sufficient to frame charges under any of the above sections of IPC.

12. Now coming to offences under PCPNDT Act, Section 23 of this Act deals with penalties for contravention of any of the provisions of the Act or rules made thereunder. Section 25 deals with penalty for contravention of the provisions of the Act or rules for which no specific punishment is provided in the Act. It is a residual

section. Though it is mentioned in the chargesheet that the inspection was being conducted by one Dr. Sandeep Gautam from Delhi, however, neither she or any other member from Delhi team has filed any complaint before the police on that day regarding the alleged incident or of any violations of provisions of PCPNDT Act. The complaint on the basis of which the present FIR also makes no mention of any specific violations of provisions of PCPNDT Act as observed in the clinic of accused pursuant to said raid on the day of alleged incident. There is also no document annexed with the chargesheet from which non-compliance of above provisions could be observed. The statement of decoy witness or of Dr. Santosh was not recorded by the IO under section 161 CrPC. In the statements of all the witnesses recorded under section 161 CrPC during investigation also there is nothing alleged by them regarding any specific violation of sections 23/25 of PCPNDT Act by the accused. No material was collected in this regard during the investigation.

13. Therefore, in view of the above discussion, there is insufficient material on record before the court and no prima facie case is made out for framing charges against the accused for the alleged offences u/s.186/353/332/341/34 IPC and u/s.23/25 PCPNDT Act. Accordingly, accused Dr. Sushil Garg is hereby discharged from the offence u/s.186/353/332/341/34 IPC and u/s.23/25 PCPNDT Act.

14. Any other pending applications, if any, and tagged complaint also stands disposed off.

File be consigned to record room as per rules.

(Pankaj Rai)

JMFC-01/NE/KKD/17.10.2025