

*Before Satish Kumar Mittal, J.*

JARNAIL SINGH SAKI AND ANOTHER,—*Petitioners*

*versus*

STATE OF PUNJAB,—*Respondent*

CRIMINAL MISC. NO. 47610/M OF 2006

25th August, 2006

*Code of Criminal Procedure, 1973—S. 294—Registration of case against petitioners—Case at the stage of consideration of framing charge—Petitioner filing an application along with certain documents to show that the allegations levelled against them are false—Dismissal of application by trial Court—Challenge thereto—Whether at the stage of consideration of framing charge accused can produce documents with an application u/s 294 for their admission and denial by prosecution—Held, no—Accused can avail his right under section 294 only after the charge is framed and trial commences—Petition dismissed.*

*Held*, that at the stage of framing of charge, the Court is required to take into consideration the report submitted by the police under section 173 of the Code along with the documents attached therewith and to hear the submissions of the prosecution and the accused. At this stage, the court is not required to take into consideration the other material or documents produced by the accused. The Court is also not required to ask for the admission and denial of documents under section 294 of the Code before the trial actually commences. In my opinion, the accused can avail his right under section 294 of the Code only after the charge is framed and trial commences. The right of summoning some documents in defence cannot be invoked at the stage of framing of charge and the relevant stage for the accused to produce the documents is at the defence stage.

(Para 5)

A. K. Sharma, Advocate, *for the petitioners.*

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**JUDGEMENT**

**SATISH KUMAR MITTAL, J.**

(1) The sole question involved in this petition is : whether at the stage when the case is fixed for consideration of framing charge, the accused can produce certain documents with an application under Section 294 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for their admission and denial by prosecution ?

(2) In this case, FIR No. 55, dated 14th March, 2001 was lodged against the petitioners. After the investigation, challan was filed by the police. When the case was at the stage of consideration of framing charge, the petitioners moved an application that the prosecution be asked to admit and deny 14 documents annexed with the application to show that the allegations levelled in the FIR against the petitioners are false. The trial court,—vide order dated 15th June, 2006, has dismissed the said application while observing that at the stage of framing of charge, no such application filed by the accused can be entertained, as at this stage, only challan along with documents submitted by the police is to be considered. It has been observed that the accused can avail the right conferred under Section 294 of the Code at the appropriate stage when the evidence is led during the trial. Against the said order, the instant petition has been filed.

(3) I have heard counsel for the petitioners and perused the impugned order.

(4) Counsel for the petitioners submits that Section 294 of the Code does not put any limitation as to at what stage, this provision has to be followed. He submits that the accused can invoke Section 294 of the Code even at the stage of framing of charge, as sub-section (3) of Section 294 of the Code clearly provides that the documents may be read in evidence in any inquiry trial or other proceeding under the Code without proof of the signature of the person to whom it purports to be signed, where the genuineness of such documents is not disputed. Counsel further submits that once a document is admitted, it can be used in any proceeding besides the

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inquiry and trial. Therefore, the formalities of Section 294 of the Code have to be observed before initiation of any inquiry or trial. Counsel for the petitioners submits that if the documents are admitted before framing the charge, they become evidence not only for the purpose of trial but also for the purpose of framing of charge. In support of his contention, he has relied upon a decision of the Rajasthan High Court in **M.C. Agarwal versus State of Rajasthan (1)**, wherein it was held that a bare reading of Section 294 of the Code itself goes to show that no limitation as to the stage at which admission or denial has to be made, has been laid down, therefore, this provision can be resorted to at the time of framing of charge, so that the time of the court is not wasted in proving documents which have been admitted either by the prosecution or by the accused. Counsel for the petitioners further relied upon another decision of the Delhi High Court in **Ashok Kauhsik versus State (2)**, wherein it was held that the power under Section 294 of the Code can be exercised before framing of charge and evidence so produced may be taken into consideration for the purpose of deciding whether charge should or should not be framed against the accused.

(5) After hearing counsel for the petitioners, I do not find any substance in the submissions made by him. It is well settled that at the stage of framing of charge, the court is required to take into consideration the report submitted by the police under Section 173 of the Code along with the documents attached there with and to hear the submissions of the prosecution and the accused. At this stage, the court is not required to take into consideration the other material or documents produced by the accused. The court is also not required to ask for the admission and denial of documents under Section 294 of the Code before the trial actually commences. In my opinion, the accused can avail his right under Section 294 of the Code only after the charge is framed and trial commences. A similar question as to whether there is any statutory requirement compelling or permitting the trial court to take into consideration the material produced by the defence at the stage of taking cognizance or framing of charges came up for consideration before the Supreme Court in **State of Orissa versus Debendra Nath Pandhi (3)**, While

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(1) 1995 (3) R.C.R. (Criminal) 222

(2) 1999 (3) Recent Criminal Reports 595

(3) 2003 (2) Recent Criminal Reports 116

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answering this question, it was held that at the stage of framing of charge, there is no requirement in law that the court should either give an opportunity to the accused to produce evidence in defence or consider such evidence produced by the accused. It was held that Section 227 of the Code provides that in a case triable by the Court of Sessions, if on consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the prosecution and the accused the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so. This section nowhere contemplates an opportunity being given to the accused person to produce evidence in defence at that stage. The Section is quite clear that whatever consideration that has to be made by the court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the Court comes to the conclusion that there is ground for presuming that the accused has committed an offence then the Court shall frame charge under Section 228 of the Code, otherwise it shall discharge the accused under Section 227 of the Code. Almost similar is the requirement of law when a warrant case is being considered for framing a charge under Section 240 of the Code. In my opinion, the right of summoning some documents in defence cannot be invoked at the stage of framing of charge and the relevant stage for the accused to produce the documents is at the defence stage.

(6) In view of the law laid down by the Supreme Court in **State of Orissa versus Debendra Nath Padhi (supra)**, in my opinion, the judgments cited by counsel for the petitioners are of no help to the petitioners. Thus, in my opinion, the Trial Court has rightly dismissed the application of the petitioners for admission and denial of certain documents at the stage of framing of charge.

(7) Dismissed.

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**R.N.R.**