

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.862 of 2014**

Baburam, S/o. Fulsingh Sahu, Aged About 38 Years, R/o. Indira Colony, Baloda Bazar, P.S. & Tah. Baloda Bazar, Revenue District Baloda Bazar (Bhatapara), Civil District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through: District Magistrate, Bloda Bazar, District Balodabazar, Bhatapara, Chhattisgarh.

---- Respondent

 For Applicant : Mr. Prakash Tiwari, Advocate.
 For Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18/11/2015**

1. This petition is against the order dated 13.06.2014 passed in Criminal Revision No.H15/2014 by the Session Judge, Baloda Bazar whereby the order dated 22.11.2013 passed by the trial Court in Criminal Case No.440/2013 (*State v. Baburam Sahu*) has been affirmed. The order pertains to discharge of the applicant from the charges.
2. Learned counsel for the applicant submits that the charges under Section 409 is not made out as per the inspection carried out and only the report was made that in the intermediating period the shop was closed for certain time and there is no defalcation and misappropriation of the stock. He further submits that according to the report made, the State itself i.e. the Collector by a communication dated 22.02.2013 has directed to take action in the public distribution system and instead of doing that a report under Section 409 of IPC has been made. He further submits that there is no loss of the property and consequently no allegation can be made out.

3. Per contra, learned State counsel opposes the argument.
4. The document contains a report which shows that the applicant was salesman and on inspection it was found that 105.10 Quintal Rice and 3.55 Quintal Wheat was less and report further shows that Kerosene, Salt and Sugar were shown to be distributed which were not done. Therefore, the document which is placed on record *prima facie* shows that on enquiry it was found that certain amount of Rice and Wheat found less, consequently, the report was made.
5. The Supreme Court in the case law reported in ***AIR 2013 SC 52 (Shoraj Singh Ahlawat and Ors. Vs. State of U.P. and Anr.)*** has held that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in *Onkar Nath Mishra and Ors. Vs. State (NCT of Delhi) and Anr. (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 “ 2008 AIR SCW 96)*.
6. Taking into account the documents and evidence collected by the prosecution, I am not convinced with the argument advanced by the learned counsel for the applicant to discharge the applicant, as the evidence would show that *prima facie* case has been made out against the applicant.

7. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the petition is dismissed. It is made clear that any observation made by this Court shall not come in way while adjudicating the case on merits.

Sd/-
(Goutam Bhaduri)
JUDGE

Ashok