

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 195 OF 2015**

1. Surendra Kumar Singh S/o Ramakant Singh Age 49 year R/o Boring Road Patna P/s Krishnapuri Patna Bihar, Presently Shikhar Apartment Junwani road Bhilai Distt. Durg Civil and Revenue Distt. Durg C.G.
2. Satendra Singh S/o Shyam Bahudur Singh age 48 year r/o CH-107 Aditya Nagar P/s Mohan-Nagar Distt. Durg C.G.
3. Jitendra Singh S/o Shriramnath Singh age 31 year r/o BSL colony D-27 Dugdha Bokaro Jharkhand presently R/o Kailash Nagar near Dalit Parishar Bhilai Distt. Durg Civil and Revenue Distt. Durg C.G.
4. Asish Rangari S/o Deepak Rangari aged 26 year Lokmanya Society Rohnipuram C-26 Raipur Civil and Revenue Distt. Raipur C.G.

---Applicants

Versus

State of Chhattisgarh, Through P/s Jamul Distt. Durg C.G.

---Non-applicant

For Applicants	:	Mr. Kishore Bhaduri, Advocate with Mr. Ajay Mishra, Advocate.
For-Non-applicant	:	Mr. Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C A V Order****07/09/2015**

1. Heard on the question of admission.
2. By this criminal revision applicants assail the order dated 10/02/2015 passed by Second Additional Sessions Judge, Durg, C.G., framing charge for the offence punishable under Section 304 Part-I of the Indian Penal Code (for short 'IPC').

3. Case of prosecution in nutshell, is that, on 04/02/2013 deceased- Lalit Chaturvedi was carrying iron rods for the purpose of centering work of slab came into the contact with high tension line, on account of which, Lalit Chaturvedi electrocuted and succumbed to death, for which, the present applicants have been charge sheeted for the offence under Section 304/34 of the IPC.

4. Learned Second Additional Sessions Judge, Durg, by its order dated 10/02/2015 framed charge against the present applicants for commission of offence punishable under Section 304 Part-I of the IPC.

5. Mr. Kishore Bhaduri, learned counsel appearing for the applicants/accused would submit that learned Second Additional Sessions Judge, Durg is absolutely unjustified in order framing charge for the offence under Section 304 Part-I of the IPC as there was no intention on the part of the present applicants to cause death of Lalit Chaturvedi, as such, charge levelled against the present applicants deserves to be altered in view of the material available in the charge sheet. Learned counsel for the applicants would further submit that applicant is General Manager of the Company and other applicants employed under General Manager for supervision of the work. Learned counsel for the applicants would also submit that present applicants have moved an application to the CSPDCL for shifting high tension line from the construction area on 30/06/2012 by depositing supervision charges, but the CSPDCL did not shift the high tension line. He would lastly submit that it is Capital Construction Company, who has engaged labour for the work and the present applicants are not responsible for the said offence, if any and relied upon the decision of Supreme Court rendered in the matter of **State of Rajasthan v. Chhittrarmal**¹.

¹ (2007) 10 SCC 792

6. To resolve the controversy, it appears necessary first of all to have a look on the provisions of Section 304 of the IPC, which reads as under:-

“304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

7. Plain reading of the above Section makes it clear that it is in two parts. The first part of the section is generally referred to as "Section 304, Part I", whereas the second part as "Section 304, Part II". The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

8. Before Section 304 of the IPC can be invoked, the following ingredients must be satisfied;

- (i) the death of the person must have been caused;
- (ii) such death must have been caused by the act of the accused by causing bodily injury;
- (iii) there must be an intention on the part of the accused
 - (a) to cause death; or

- (b) to cause such bodily injury which is likely to cause death; (Part I) or
- (iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).

9. In the case in hand, it is apparent that the deceased was a labour working at the construction site with the co-accused Ashish Shukla in the Amrapali Vananchal City, Bhilai District Durg. The said site was very near to the electricity supply line (high tension line) having capacity of 11000 K.V. (approximately between the high tension line and the construction site was much below 2.5 meter) and the applicants have allowed building construction to be made near high tension line and did not get it removed before commencement of the work and merely because they have approached electricity company for shifting high tension line from the area, it cannot be concluded at this stage that there was no intention on the part of the applicants for commission of offence under Section 304 Part-I of the IPC and as such, the decision relied upon by the applicants in case of **Chhitramal** (supra) is not helpful to the applicants.

10. Before proceeding further, it would be appropriate to notice relevant judgments of the Supreme Court with regard to jurisdiction of this Court to interfere with the order framing charge:-

11. In the matter of **State of Maharashtra v. Priya Sharan Maharaj and others**², the Supreme Court has held that at the stage of framing charge, Criminal Court has to find out whether there is ground for presuming that accused has committed offence or not to following effect:-

“8. The law on the subject is now well settled, as pointed out in the matter of **Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4**

² (1997) SCC (Criminal) 584

SCC 76, that at Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken in their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

12. Very recently in the matter of **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**³, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“**12.** On analysis of the above discussion, it can safely be concluded that 'presuming' is an expression of relevancy and places some weightage on the consideration of the record before the Court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.”

13. In the matter of **Amit Kapur v. Ramesh Chander and another**⁴, the Supreme Court while considering the scope of jurisdiction of this Court in revision against the order of charge held as under:-

³ 2013 Cri.L.J. 754

⁴ JT 2012 (9) SC 329

“The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.”

14. In the aforesaid decisions, Their Lordships of the Supreme Court have clearly held that at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that an accused had committed offence and not for the purpose of arriving at a conclusion that it is not likely to lead to conviction. The learned Second Additional Sessions Judge, Durg after considering the material on record clearly came to the conclusion that there is ground for presuming that the applicants have committed offence under Section 304 Part-I of the IPC and framed charge for commission of aforesaid offence.

15. After hearing learned counsel appearing for the applicants and upon perusal of the record; and also considering the charge framed; nature of

evidence available on record, the fact that charge sheet has been filed against the present applicants and the manner in which the applicants allowed the deceased to work near the high tension line by which deceased Lalit Chaturvedi was electrocuted and succumbed to death, I do not consider it a fit case for interfering in the revision against order framing charge. However, the applicants are at liberty to establish their defence during course of trial.

16. Consequently, criminal revision deserves to be and is accordingly dismissed at the admission stage without notice to other side.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari