

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 672 of 2015

Rahul Sharma S/o Shri Rajkumar Sharma, Aged About 27 Years,
Police Station Neora, R/o Ward Number 18, Bajrang Ward Neora,
Thana Neora, District Raipur, Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through: Police Station Neora, District
Raipur, Chhattisgarh

---- Respondent

For Petitioner – Dr. N.K. Shukla, Sr. Advocate with Shri Manoj Yadav,
Advocate.

For Respondent/State – Shri Ajit Singh, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/10/2015

1. Instant petition under Section 482 of Cr.P.C. is against the order dated 25/06/2015 passed in Criminal Revision No.163/2015 by the Sessions Judge, Raipur. By such order, order passed by the Judicial Magistrate First Class, Tilda, District Raipur in Criminal Case No.43/2015 in between State Vs. Rahul Sharma passed on 15/04/2015 was affirmed. The petition pertains to challenge of framing of charges.

2. Learned counsel for the petitioner would submit that in order to constitute the offence under Section 506-B of IPC, presence of complainant is must which is absent in this case. He vehemently submits that in such case if charges are framed, it will amount to complete illegality as prima facie offence is not made out.

3. Reading of the order would show that during the course of

argument before the revisional court, petitioner has waved his right to challenge framing of charge under Section 506-B of IPC. Consequently, in the opinion of this court having waved his right before revisional court same cannot be agitated before this court in petition under section 482 of Cr.P.C. Both the court below has come to finding of fact and the charges have been framed. Reading of the order would show that charges have been framed under Section 294, 506-B and 452 of IPC. Finding of the court is recorded that after perusal of the charge sheet prima facie offence is made out.

4. 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).*

5. Therefore, considering the documents placed alongwith the petition, it can not be substantially held that no prima-facie case is made out

against the petitioner.

6. Therefore, taking into account the argument, which has been advanced by the learned counsel for the petitioner, can not be accepted as the Court has to see only prima-facie where there is ground to presume that the accused had committed the offence or not.

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 the Court has not expressed any opinion on merits about admissibility or to draw inference of any accusation and interpretation of statement or evidence.

Sd/-
(Goutam Bhaduri)
Judge