

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P No. 780 of 2013

Salik Ram Deshmukh S/o. Durga Ram Deshmukh, aged about 48 years, R/o. Village Kotgaon, P.S. Arjunda, Tahsil Gunderdehi, Revenue District Balod, Civil District Durg (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, Through : District Magistrate, Balod (C.G.)

---- Respondent

For Petitioner	:	Mr. Atanu Ghosh, Advocate
For State/respondent	:	Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16/12/2015

1. Challenge in this petition is to the order dated 12.07.2013, passed by the Court of 3rd Additional Sessions Judge, Durg, District Durg in Criminal Revision No. 116/2013, whereby the order passed by the Judicial Magistrate First Class, Gunderdehi, dated 22.03.2013 was affirmed. By such order charges under sections 420, 409/34 of Indian Penal Code were framed against the petitioner which is under challenge.
2. Learned counsel for the petitioner would submit that the allegations of 3171.79 quintals of paddy and 24122 numbers of bags were sold by the petitioner alongwith other co-accused, therefore, the embezzlement of Rs. 44,86,901.20 was made but actually there is no evidence against the petitioner before the Court and the tender was

granted to Adeshwar Yadu and Jeevanlal Dewangan. It is submitted that the case under section 409 /34 of IPC is not made out against the petitioner. He further submits that in view of the facts no offence has been committed by the petitioner and he was liable to be discharged from the charges.

3. Per contra learned State counsel opposes the same.
4. I have gone through the order which records that the documents which was placed on record would show that the evidence have been collected by the prosecution which shows that the enquiry report dated 13.05.2012 at para No. 9 and 10 records that the tender was granted to Adeshwar Yadu and Jeevanlal Dewangan and the petitioner i.e. Salik Ram Deshmukh was working as an agent on behalf of the Adeshwar Yadu and Jeevanlal in whose favour the tender was granted and the entire transaction was being made by them. Therefore, primaface it appears that the petitioner would be covered as an agent.
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. 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.
7. 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.
8. Reading the contents of FIR and the statement collected by the prosecution would go to show that strong suspicion about existence of facts constituting offence is made out at this stage when the evidence is not adduced.
9. 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