

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 716 of 2015

Rajnarayan Gahirwar S/o Shri B. Gahirwar, Aged About 61 Years R/o Village Block Education Officer Seetapur, District Surguja (Chhattisgarh) Permanent Resident Of Village Saloni, Tehsil And Police Station Baloda Bazar, District Raipur (Chhattisgarh) Now Baloda Bazar (Chhattisgarh)

---- Petitioner

Versus

State Of Chhattisgarh Through Anti Corruption Bureau, Raipur, District Raipur Chhattisgarh

---- Respondent

Shri Sunil Otwani, counsel for the petitioner/s.
Shri Manish Nigam, Panel Lawyer for the State.

Order On Board

17/09/2015

The pivotal issue arising for consideration in this petition is whether framing of charge is vitiated on account of non-compliance of provisions contained in Section 238 of CrPC.

2. Quintessential facts necessary for decision of the issue involved in this petition are that the charge sheet has been filed against the petitioner in the Court of Special Judge, Ambikapur for alleged commission of offence under Section 7, 13(1) (d) and 13(2) of Prevention of Corruption Act.

3. Along with the charge sheet, the documents relied upon by the prosecution were supplied but the CD containing conversation as an incriminating material of demand and acceptance was not supplied. The charge sheet contains the transcript.

4. On application made by the petitioner, the Court passed an order on 03/08/15 directing prosecution to supply copy of CD to the petitioner. On 04/08/15, the petitioner moved an application under Section 227 of CrPC for

discharge, which was rejected. Thereafter, on 06/08/15, the Court proceeded to frame charges against the petitioner. It is this order, which is under challenge.

5. The only submission advanced by learned counsel for the petitioner is that in view of provisions contained in Section 5 of the Act of 1988 in the matter of trial for commission of offence in the Act of 1988, the provisions relating to trial of warrant cases under CrPC would be applicable. The Court has to be first satisfied with regard to compliance of Section 207 of CrPC under which, at the time of filing charge sheet, documents filed along with the charge sheet are required to be supplied to the accused. The Court was fully aware of this fact because the order was passed for supply of CD containing conversation of demand and acceptance. However, without ensuring supply of the copy of the same, the Court proceeded to frame charges against the petitioner. Therefore, the order of framing of charge is vitiated.

Reliance has been placed on the judgment in the case of **Pramod Kumar Sharma v. State of U.P. and anr, 2011 CriLJ 1088.**

6. On the other hand, learned counsel for the State submits that the Court has already passed order for supplying copy of CD. Mere non-supply of CD particularly when the transcription has already been supplied, does not vitiate framing of charge. It is also submitted that as the remedy is available to the petitioner, this petition under Article 227 of the Constitution of India is not maintainable. One more objection of the State counsel is that the petitioner has not challenged order dated 04/08/15 rejecting application under Section 227 of CrPC for discharge. Therefore, challenge to order of framing of charge is liable to be rejected.

Section 5 of the Act of 1988 provides thus -

“(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of

1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord.38 of 1944).”

7. It is therefore clear that the Court, while trying for commission of offence under the Act of 1988, is required to follow the procedure prescribed in the matter of trial of warrant cases. In view of above legal position, the

Court is obliged under the law to satisfy itself with regard to compliance of Section 207 of CrPC as explicitly mandated under Section 238 of CrPC which reads thus -

“207- Supply to the accused of copy of police report and other documents -

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following -

- i) the police report;
- ii) the first information report recorded under Section 154;
- iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of Section 173;
- iv) the confessions and statements, if any, recorded under Section 164;
- v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of Section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

Section 207 CrPC requires supply of the documents to the accused at the time of filing of charge sheet. Order dated 03/08/15 of the Court makes this undisputable that CD was not supplied to the petitioner.

In the case of **Pramod Kumar Sharma (supra)**, in identical situation, finding non-compliance of Section 238 of CrPC, the order of framing of charge was held to be vitiated.

8. The objection with regard to maintainability of this petition is liable to be rejected as there is no absolute bar. True it is that ordinarily, this Court would not entertain petition under Article 227 of the Constitution of India when there is an alternative remedy, however, after going through the merits of the case, I am not inclined to throw this petition only on this ground.

9. The other objection is also liable to be rejected as the framing of charge had taken place only on 06/08/15. It is not that after rejection of petitioner's application under Section 227 of CrPC, petitioner accepted the same and did not object framing of charge and only at later stage, challenge is being made.

10. In view of above, the petition is allowed. The order of framing of charge is set aside. The Trial Court is directed to supply a copy of CD to the petitioner and then proceed to consider framing of charges.

Sd/-

Manindra Mohan Shrivastava
Judge