

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.186 of 2014

Dilip Kumar Das (D.K. Das), S/o Shri Sankha Nidhi Das, aged about 48 years, the then Income Tax Officer, Ward 1(1), Income Tax Department, Income Tax Bhawan, Civil Lines, Raipur (C.G.), R/o Qtr. No.22-D, Russian Complex, Sector-7, Bhilai, Distt. Durg (C.G.)

---- Applicant

Versus

Central Bureau of Investigation (ACB), Chhattisgarh, Bhilai, Distt. Durg (C.G.), Civil & Revenue Distt. Durg (C.G.)

---- Non-applicant

For Applicant:	Mr. Maneesh Sharma, Advocate.
For Non-applicant:	Mr. Kishore Bhaduri, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

23/09/2015

1. The Central Bureau of Investigation (CBI) charge-sheeted the applicant for offence punishable under Section 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 alleging possession of property disproportionate to his known source of income. By order dated 29-1-2013, the Special Judge, CBI, Raipur rejected his application for production of documents. The order rejecting the said application was challenged in Criminal Revision No.112/2013 before this Court and this Court by order dated 15-2-2013 allowed the revision and directed the non-applicant CBI to produce the documents seized and the statements recorded during investigation as mentioned in the charge-sheet and further directed the Special Judge, CBI to take into consideration those documents and statements along with material filed with the charge-sheet. Thereafter, charges were framed by the Special Judge, CBI by order dated 18-2-2013 which was again challenged by the applicant in

Criminal Revision No.312/2013 before this Court and this Court disposed of that revision directing the non-applicant CBI to comply its earlier order dated 15-2-2013 passed in Criminal Revision No.112/2013 and produce the documents as early as possible and also directed to consider alteration or addition or discharge of the applicant in the light of the entire material produced before it. Thereafter, the Special Judge, CBI has passed the impugned order dated 30-1-2014 in which statement of the CBI has been recorded that there is no such document available with the CBI relating to HUF, therefore, no such document could be supplied to the applicant. The aforesaid statement was recorded on 22-1-2014. However, the CBI supplied the statements of two witnesses namely Smt. Mamta Das and Dilip Kumar Das recorded under Section 161 of the CrPC.

2. By the impugned order, the Special Judge, CBI has rejected the application filed for discharge, dated 22-1-2014 holding that the document filed by the accused person cannot be taken into consideration, as defence document cannot be considered at the stage of framing charges and the applicant is not entitled to be discharged. Feeling dissatisfied with the order rejecting his application for discharge, the instant revision has been filed by the applicant stating that the order passed by the Special Judge, CBI deserves to be set aside being perverse and contrary to the law settled in this regard.
3. Mr. Maneesh Sharma, learned counsel for the applicant, would vehemently submit that despite the order of this Court dated 15-2-2013, the CBI did not disclose the fact that they had no such document in their possession and continued with the prosecution, and only on 22-1-2014, they made such a statement before the Court and they have only supplied two documents viz., statements of Smt.

Mamta Das & Dilip Kumar Das recorded under Section 161 of the CrPC and made statement that they did not have any other document in their possession seized particularly, HUF documents which goes to show that the CBI is not acting fairly while prosecuting the applicant. He would further submit that the applicant is facing prosecution for the offence under Section 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and, therefore, liberty is required to be given to the applicant at the stage of framing charge and document filed by the applicant in defence explaining alleged disproportionate property to his known source of income, is required to be considered at the stage of framing charge. Therefore, the Special Court has committed illegality in holding that defence documents filed by the applicant relating to income of HUF and income of wife of the applicant, particularly income tax return cannot be considered at the time of framing charge, over looking the fact that it is the case of prosecution of the applicant under Section 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 which is distinct and separate from the offence triable under the provisions of the Indian Penal Code. Therefore, rejection of application for discharge of the applicant without considering the defence documents filed by the applicant which are public documents issued by the Department of Income Tax maintained in accordance with law holding that it can be established by the applicant during the course of trial, is absolutely illegal and bad in law and as such, the order declining to set aside discharge of the applicant deserves to be set aside in exercise of revisional jurisdiction under Section 397 read with Section 401 of the CrPC. Adding further, Mr. Sharma, learned counsel, would rely upon the decision of the Supreme Court in the matter of **Rukmini Narvekar**

v. Vijaya Satardekar and others¹ and laid great emphasis on paragraph 22 to highlight his plea that in rare and exceptional cases the defence material cannot be looked into by the Court at the time of framing of charge particularly, in case of Section 13 (1) (e) of the Prevention of Corruption Act, 1988 where the accused is entitled to explain the possession of the alleged disproportionate property to his known source of income.

4. Per contra, Mr. Kishore Bhaduri, learned counsel appearing for the non-applicant CBI, while countering the submissions made by learned counsel for the applicant would vehemently submit that in compliance with the Court's order, the CBI acting fairly has supplied the statements of Smt. Mamta Das & Dilip Kumar Das recorded under Section 161 of the CrPC on 3-10-2013 to the applicant immediately after the order was passed by this Court and made a fair statement on 22-1-2014 that the CBI has no other document in their possession seized relating to HUF except what have already been filed on 21-10-2013. Adding further, Mr. Bhaduri, learned counsel, relying upon the decision of the Supreme Court in the matter of **State of Orissa v. Debendra Nath Padhi**² would submit that Their Lordships of the Supreme Court while overruling **Satish Mehra v. Delhi Admn.**³ which took the view that defence material can be seen at the stage of trial, it has been held by the larger Bench that at the time of framing of charge, accused has no right to produce any material. Therefore, he would submit that the order of this Court passed earlier has been complied with and the documents in possession / seized have already been supplied to the applicant and the Special Judge, CBI has rightly held that defence material cannot be looked into at the time of framing

1 (2008) 14 SCC 1

2 (2005) 1 SCC 568

3 (1996) 9 SCC 766 : 1996 SCC (Cri) 1104

charge and as concluded by the Supreme Court in the **State of Orissa** (supra), the Special Judge, CBI is absolutely justified in rejecting the application for discharge of the applicant. The revision being substance-less deserves to be dismissed.

5. I have heard learned counsel for the parties, given thoughtful consideration to the rival submissions and also gone through the record with utmost circumspection.
6. The short question that falls for consideration is whether the Special Judge, CBI at the time of framing charge can consider the defence material filed by the accused?
7. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice Section 227 of the CrPC which provides that the trial Court at the stage of framing charge is required to consider whether there are sufficient grounds to proceed against the accused. Sections 227 and 228 of the CrPC provide as under: -

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of

warrant cases instituted on a police report;

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. The law with regard to consideration of defence documents at the time of framing charge is well settled. Way back in the year 1979, in the matter of **Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja**⁴ it has been held by Their Lordships of the Supreme Court that at the time of framing charge, the trial Court can consider only the material placed before it by the investigating agency, there being no requirement in law for the Court to grant at that stage either an opportunity to the accused to produce evidence in defence or consider such evidence the defence, if any, produced at that stage. However, later-on in the matter of **Satish Mehra** (supra), the Supreme Court has held that the trial Court would be well within its power to consider even material which the accused may produce at the stage contemplated in Section 227 of the CrPC.
9. The aforesaid view taken by the Supreme Court in the matter of **Satish Mehra** (supra) was referred to larger Bench doubting its correctness. Their Lordships of the Supreme Court (larger Bench) in the matter of **Debendra Nath Padhi** (supra) considered the matter in detail and held that at the stage of framing of charge the defence of the accused cannot be considered, and laid down the law as under: -

“The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A

4 (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323

omitted have already been noticed. Further, at the stage of framing of charging roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth.”

10. Their Lordships further authoritatively laid down in para 23 of **Debendra Nath Padhi's** case (supra) the view that the accused has no right to produce any document and held that **Satish Mehra's** case (supra) has not been decided correctly, by observing as under: -

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra* case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

11. In the matter of **Rukmini Narvekar** (supra), the decision on which learned counsel for the applicant has placed heavy reliance, also **Devendra Nath Padhi's** case (supra) was noticed and it has been held in para 38 as under: -

“38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath*

Padhi case by the larger Bench therein to which the very same question had been referred.”

12. Similarly, in a decision in the matter of **State Anti-Corruption Bureau, Hyderabad and another v. P. Suryaprakasam**⁵, Their Lordships of the Supreme Court while dealing with the question of framing of charge under Section 5 (2) of the Prevention of Corruption Act, 1947, have held that at the time of framing charge, the only right the accused has at that stage is of being heard and nothing beyond that and relying upon a decision in the matter of **Minakshi Bala v. Sudhir Kumar**⁶, held as under: -

“5. According to the above sections, at the time of framing of a charge what the trial court is required to, and can, consider are only the police report referred to under Section 173 CrPC and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. Of course, at the stage the accused may be examined but that is a prerogative of the court only. Though, in view of the clear language of the above sections, no authority need be cited for the above proposition still we may refer to the judgment of this Court in *Minakshi Bala v. Sudhir Kumar* (to which one of us was a party) for therein, the scope and ambit of the above sections came up for consideration and it was held: (SCC p. 144, para 6)

“6. Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 CrPC and examine the accused, if he thinks necessary, and give an

5 (2008) 14 SCC 13

6 (1994) 4 SCC 142 : 1994 SCC (Cri) 1181

opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 CrPC; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 CrPC”.

13. Recently, in the matter of **Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another**⁷, Their Lordships of the Supreme Court, while reiterating the law laid down in **Debendra Nath Padhi's** case (supra), have clearly held that at the time of framing charge, the accused is entitled to urge his contentions only on materials submitted by the prosecution, he is not entitled to produce any material at this stage and the Court is not required to consider any such material, if submitted.
14. Very recently, in a decision in the matter of **State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption v. N. Suresh Rajan and others**⁸, while reiterating and following the law laid down in **Sheoraj Singh Ahlawat** (supra), Their Lordships of the Supreme Court have held that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption, and observed as under: -

“It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the

⁷ (2013) 11 SCC 476

⁸ (2014) 11 SCC 709

alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

15. Their Lordships while considering the identical fact situation further observed that the property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and observed as under in para 32.3 as follows: -

“32.3. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law.”

16. Thus, the crystallized judicial view as on day is that at the stage of framing charge, the trial Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused, and the

accused is competent to make his submissions only on the material supplied by the prosecution, he is not entitled to produce any document in his defence and rely upon the same and the trial Court is not bound to consider those defence documents at the time of considering the question of framing charge.

17. Turning back to the facts of the case, if the findings of the learned Special Judge are examined with reference to the law laid down by Their Lordships of the Supreme Court in aforesaid cases (supra), it is quite vivid that the Special Judge has declined to consider the defence documents filed by the applicant holding that the documents are the defence material which cannot be looked into at the stage of consideration of charge, as such, the order of the Special Judge declining to consider defence documents at the time of framing charge, is in consonance with the law laid down in this behalf by Their Lordships of the Supreme Court and accordingly held to be unassailable.

18. As a fall out and consequence of the aforesaid discussion, the revision petition is devoid of merit, it deserves to be and is accordingly, dismissed. The Special Judge is directed to proceed in accordance with law expeditiously.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.186 of 2014

Dilip Kumar Das (D.K. Das), S/o Shri Sankha Nidhi Das, aged about 48 years, the then Income Tax Officer, Ward 1(1), Income Tax Department, Income Tax Bhawan, Civil Lines, Raipur (C.G.), R/o Qtr. No.22-D, Russian Complex, Sector-7, Bhilai, Distt. Durg (C.G.)

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Central Bureau of Investigation (ACB), Chhattisgarh, Bhilai, Distt. Durg (C.G.), Civil & Revenue Distt. Durg (C.G.)

HEAD NOTE

At the time of framing charge, defence material filed by the accused cannot be looked into.

आरोप विरचित करते समय, अभियुक्त द्वारा प्रस्तुत बचाव सामग्री पर विचार नहीं किया जा सकता है।