

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 383 OF 2014**

Ashok Sharma S/o Vans Gopal Sharma, Aged about 50 years, R/o village Seoni (Dumarihatola) Police Station Marwahi, District Bilaspur, Chhattisgarh

---Applicant**Versus**

State of Chhattisgarh Through Police Station Marwahi, (P.S. Gaurela wrongly mentioned in Ann.P-1), District Bilaspur, Chhattisgarh

----Non-applicant

For Applicant	:	Mr. Yogeshwar Sharma, Advocate
For Non-applicant	:	Mr. O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****17/09/2015**

1. Heard on admission.
2. By this criminal revision applicant assails the order dated 16/04/2014 passed by the Additional District and Session Judge, Pendra Road, District Bilaspur, C.G., framing charge for the offence punishable under Sections 304-B, 302 & 201 of the Indian Penal Code (for short 'IPC').
3. Mr. Yogeshwar Sharma, learned counsel appearing for the applicant/accused would submit that order framing charge is unsustainable and bad in law as there is delay in lodging the FIR; date of alleged occurrence was 30/03/2013, whereas, FIR was lodged on 04/04/2013 against the applicant along with Dilip Sharma, Sunita Sharma and Meena Pandey for the offence punishable under Sections 498 & 304(B) of the IPC and charge sheet was filed only against the present applicant-Ashok Sharma. He would further submit that according to the postmortem report, cause of death was

asphyxia due to strangulation but there is no sign of asphyxia on the body of deceased and there is no material against the applicant for framing charge for the aforesaid offences, therefore, applicant is entitled to be discharged from the aforesaid offences.

4. Mr. O.P. Sahu, learned Govt. Advocate appearing for the State/non-applicant would submit that though the incident was occurred on 30/03/2013 and thereafter merg enquiry was continuing and after completion of merg enquiry, FIR was lodged on 04/04/2013. He would further submit that the trial has already been commenced and applicant is free to raise all issues during the course of trial and at this stage, there is *prima facie* material available against the present applicant for the aforesaid offences, therefore, he is not entitled to be discharged from the aforesaid offences.

5. I have heard learned counsel appearing for the parties and perused the record with utmost circumspection.

6. At this stage, 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:-

7. In **State of Maharashtra v. Priya Sharan Maharaj and others**¹, 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 **Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 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

¹ (1997) SCC (Criminal) 584

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.”

8. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Others²**, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“19. 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.”

9. In **Amit Kapur v. Ramesh Chander and another³**, the Supreme Court while considering the scope of jurisdiction of this Court in revision against the order of charge held as under:-

“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

² (2013) 5 SCC 762

³ JT 2012 (9) SC 329

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."

10. 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 a conviction. The learned Additional District and Session Judge, Pendra Road, District Bilaspur, C.G. after considering the material on record clearly came to the conclusion that there is ground for presuming that applicant has committed offence under aforesaid Sections and framed charge for commission of aforesaid offences.

11. After hearing learned counsel appearing for the parties and taking into consideration the material collected by the prosecution against the applicant; marriage of Snehlata was solemnized with Dilip Sharma in the month of June-2009 and she died on 30/03/2013 within four years of her marriage; cause of death was asphyxia due to strangulation; merger intimation was promptly lodged on the same day i.e. 30/03/2013 and after merger enquiry,

FIR was lodged on 04/04/2013 and the fact that supplementary charge sheet has already been filed against the co-accused persons Shri Dilip Sharma, Smt. Sunita Sharma and Smt. Meena Pandey, I do not consider it a fit case for interfering in the revision against order framing charge.

12. Consequently, criminal revision deserves to be and is accordingly dismissed at the admission stage.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Tiwari