

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 751 of 2015**

Kishanraj Jain, S/o. Premraj Jain, Aged About 67 Years, R/o. Bakshi Marg,
Gole Bazar, Khairagarh, Tahsil & Police Station- Khairagarh, District
Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh, Through the District Magistrate, Rajnandgaon, District
Rajnandgaon, Chhattisgarh.

---- Respondent

For Petitioner : Mr. Rakesh Pandey, Advocate.

For Respondent/State : Ms. Farah Minhaj, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/08/2015**

1. Challenge in this petition is to the order dated 26.06.2015 passed by the learned Additional Session Judge, Khairagarh, in Criminal Revision No.04/2010. By such order, the Revisional Court affirmed the order passed by the Judicial Magistrate First Class in Criminal Case No.519/2008 in between '*State v. Kishan Raj Jain*' whereby the charges under Section 406 & 420 of IPC were framed against the petitioner.
2. Briefly stated facts of the case are that one P.K.Das, the complainant, on having seen the petitioner who used to sit inside the Post Office and believing the fact that he was an authorised agent of the Khairagarh Post Office, reposing confidence on him, 13 monthly Recurring Deposit (*for short "R.D."*) Account was opened of the families. After opening the Account, the petitioner used to withdraw the interest of the said amount and the Pass Book was also

withheld by the petitioner. The other family members of the petitioner i.e. son Mahavir & Paras at different point of time used to get signature on withdrawal form and in respect of 27 R.D. Accounts Rs.12,000/- was deposited in the Post Office and the Pass Book was also kept by the petitioner. Subsequently, an amount of Rs.8,000/- was paid to the complainant. It was stated by the complainant that the interest accrued in the R.D. were to be deposited separately but the amount in the R.D. was paid after six years and less amount was paid on the pretext that the interest in the Post Office has come down. Subsequently, on being enquired, it came to the notice that petitioner was not the agent for the purpose for which he received the money and transacted. It was further complained that if the petitioner was not an agent, the said account was handled and the amount was not deposited within stipulated time which resulted into reduction of payment of less interest.

3. Learned counsel for the petitioner would submit that no ingredients of Section 405 of IPC for cheating has been made out since according to the complainant himself the amount was paid for which the account was opened and therefore virtually there was no criminal breach of trust. Consequently the charges framed by the Court below is *ab initio* wrong on the facts of the case.
4. Learned State counsel opposes the same and submits that on believing the petitioner to be an agent of the Post Office, the amount was given to the petitioner and the said amount was routed through another account and was not timely deposited which resulted into the loss of interest. The charge sheet in this case has been filed.
5. I have gone through the order of the charges framed and the documents attached.
6. Reading the statement of Pradeep Das would reveal that R.D. of Rs.48,000/- and 60,000/- was separately opened through Kishan Raj Jain as the petitioner projected himself to be an agent of the Post Office. He further stated that in

the month of January, 1998, a cheque of Rs.1,50,000/- was given to Kishan Raj Jain and he was informed that the Bank Account has been opened and he was further required to take the amount of interest. Therefore, out of the receivable interest of Rs.1625, it was advised that R.D. Account of Rs.500/- may further be opened. Consequently, 3 Accounts were opened, however, the Pass Book was not given. Subsequently, it came to notice that R.D. Accounts were opened in name of family members after 24 months in the month of February, 2000. Therefore, though the amount was received, the Accounts were not opened within time and it was withheld to gain the interest. The trial Court after examining the case has framed the charges. *Prima facie* perusal of the documents would reveal that the charges are framed which is subject to the trial before the Court below.

7. 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)*.

8. 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.
9. 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.
10. 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