

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 822 of 2015

Sanjay Kumar Sahu, S/o. Dayaram Sahu, Aged about 38 years, R/o. Kaser Para, P.S. Chakradhar Nagar, Tehsil & District Raigarh (C.G.).

---- Petitioner

Versus

State of Chhattisgarh, Through the District Magistrate, Bilaspur (C.G.).

---- Respondent

For Petitioner : Mr. Arvind Shrivastava, Advocate.

For Respondent/State : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15/09/2015

1. Challenge in this petition is to quash the charge sheet bearing No.124-B/2015 in case of *State v. Nitin Sinha & Ors.*, which is pending before the Chief Judicial Magistrate, Raigarh, in Criminal Case No.387 of 2015 under Section 419, 420, 467, 468, 471, 120-B read with Section 34 of IPC.
2. Learned counsel for the petitioner submits that the statement and charge sheet if are traversed through, no case is made out against the present petitioner. He would submit that according to the allegations, the land was shown to be of Kailash Soni and it was subsequently sold to Nitin Sinha and Laxman Chandra wherein no role was played by the petitioner Sanjay Kumar Sahu. He further submits that only the statement of Narendra Choube would show that when he was present when the said land was shown and the purchaser have not stated anything against this petitioner so that any act can be attributed to him under the provisions of Section under which he is facing

charge. Therefore, it is contended that the charge sheet filed against the petitioner being devoid of any evidence is liable to be quashed.

3. Learned State counsel opposes the argument advanced by the learned counsel for the petitioner.
4. Reading of the charge sheet and statement of Sachin Sinha which is on record who is the brother of the purchaser Nitin Sinha would show that he has stated that the petitioner Sanjay Kumar Sahu alongwith Kailash Soni and Santosh Yadav used to visit to their house many times with respect to the sale and purchase of the land/property. He further stated that the petitioner along with others had shown the land to his brother Nitin Sinha and Laxman Chandra and he also went with them and the land was said to be of one Shamlal. Subsequently, they came back and the amount of Rs.50,000/- was received in cash wherein Kailash Soni, Sanjay Sahu and Santosh Yadav were also present and subsequently an agreement was executed.
5. Perusal of charge sheet shows the charges under Section 120-B is also clamped, therefore, at this stage what role is played by the petitioner cannot be adjudicated by way of roving inquiry by this Court. *Prima facie* reading of the statement of Sachin Sinha makes out a case and involvement of the petitioner and it would be tested in cross examination before the Court below.
6. The Hon'ble Supreme Court has laid down the guidelines to exercise the power under section 482 of Cr.P.C. and it is observed that power should be exercised sparingly, with circumspection and not on the mere asking. The power has to be exercised depending upon facts and circumstances of each case- Mini trial or roving inquiry is not contemplated. Said proposition was laid down in case law reported in **(2015) 1 SCC 103** in between ***Gunmala Sales Private Limited & Others v. Navkar Promoters Private Limited & Others***.
7. Further Hon'ble Supreme in a case reported in **(2014) 12 SCC 556** in between ***Homi Rajvansh v. State of Maharashtra & Others*** has held at

para 19 that inherent powers under Section 482 of the Code are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court.

8. The Hon'ble Supreme Court in the case of **Homi Rajvansh** (supra) in para 16 and 19 has held as under:-

“16. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint prima facie make out a case or not and the Court is not to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial.”

“19. Though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. This Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice.”

9. The Hon'ble Supreme Court further in case law reported in **(2014) 10 SCC 663** in between **Binod Kumar & Others v. State of Bihar & Another** at para 10 has laid down the principles which are reproduced herein below:-

“10. In *Indian Oil Corpn. v. NEPC India Ltd.* (2006) 6 SCC 736, this Court has summarised the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings as under: (SCC pp. 747-48, para 12)

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692, *State of Haryana v.*

Bhajan Lal 1992 Supp (1) SCC 335, Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194, CBI v. Duncans Agro Industries Ltd. (1996) 5 SCC 591, State of Bihar v. Rajendra Agrawalla (1996) 8 SCC 164, Rajesh Bajaj v. State (NCT of Delhi) (1999) 3 SCC 259, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. (2000) 3 SCC 269, Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, M. Krishnan v. Vijay Singh (2001) 8 SCC 645 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

10. Therefore, by applying the aforesaid principles and in view of the limited jurisdiction vested in this Court under Section 482 of Cr.P.C. to quash the proceeding or charge sheet, I am not inclined to invoke extra ordinary power of this court to quash the charge sheet.
11. In a result, petition is dismissed at the admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE