

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 861 of 2015**

Lilaram Markam, S/o. Shri Prabhuram Markam, Aged About 49 Years, R/o. Ambagarh Chowki, District Rajnandgaon, Chhattisgarh, Posted as Lecturer (Suspended) in the High School Patan Khas, Block Mohla, District Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Home Department, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. Superintendent Of Police, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
3. Station House Officer, Police Station Ambagarh Chowki, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. B.P.Singh, Advocate
For Respondent/State	:	Ms. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****30/09/2015**

1. This petition is preferred against the framing of charge under Section 409/34 of IPC. The charges have been framed under the section on the ground that the petitioner being in capacity of Block Education Officer (B.E.O.) has withdrawn the amount of Rs.32,18,000/- by different cheques and instead of passing it to the different beneficiaries, it has been used for self and other co-accused and thereby criminal misappropriation and breach of trust has been committed.
2. Mr. B.P.Singh, learned counsel for the petitioner, submits that admittedly the petitioner was working as B.E.O. and therefore he was under official duty to withdraw the cheques and thereby the amount was withdrawn, however, no report has been made by the beneficiaries. He further submits that only

allegation is on the ground that the entry has not been made in the Cash Register (Rokad Panji) of the B.E.O. Office. He further submits that only on the basis of audit report, one clerk of the office has lodged the FIR. He would further submit that the police had obtained the opinion of handwriting expert, however, this has not been placed on record, which goes in favour of the petitioner so as to prove his innocence. He placed his reliance in **AIR 1979 SC 366** and would submit that the trial Court should have *prima facie* considered the evidence which is available on record, which reads to form the opinion that no offence is committed by the petitioner. He further submits that all the official acts were done in the official capacity of the petitioner, therefore, in absence of any sanction under Section 197 of Cr.P.C., the prosecution cannot go further.

3. Per contra, Mr. Ashish Shukla, learned counsel for the State, vehemently opposes the argument and submits that initially an audit was conducted by the accounts department wherein it was found that by way of self cheque in between a period from 20.04.2011 to 24.06.2013 by way of 36 cheques, an amount of Rs.32.18 Lacs were withdrawn, which were encashed through the other accused. He further submits that neither the cheque was entered in the cash Register nor the receipt of payment from the different beneficiaries were found on record so as to substantiate that the amount was further paid to the beneficiaries i.e. Schools of midday meal. He further referred to the statement of one Suraj Bahadur Rawte and contended that according to the statement of this person, the offence under Section 409 of IPC is clearly made out.
4. I have heard learned counsel appearing for the parties and perused the voluminous document placed on record.
5. The audit report is the part of the charge sheet wherein on the conclusion it records that in between the period from 20.04.2011 to 24.06.2013 by way of 36 cheques, an amount of Rs.32.18 Lacs were withdrawn by the petitioner along with other co-accused Cashier. The report dated 03.12.2013 made by

the B.E.O. also perused wherein after the detail of the cheques, it is stated that the said amount was withdrawn by different cheques and after withdrawal, the entry of cash is not recorded in the cash Register and also the midday meal Register. It further records that the paid voucher of withdrawal amount was also not found. Consequently, it is reported that in absence of any voucher to show that the payment was made to the beneficiaries, the report suggests that the criminal breach of trust was committed.

6. The argument advanced by the petitioner that there might have been negligence but no criminality by the petitioner cannot be appreciated at this stage. Reading of the audit report and FIR would show that sufficient ground exists for framing of the charge. Even the argument that the sanction has not been obtained cannot be appreciated as if the offence is said to be established then the criminal breach of trust cannot be protected by virtue of Section 197 of Cr.P.C. as the criminal breach of trust would not fall within the ambit of the official job.
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 Another)*** 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. The Hon'ble Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of the accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the argument, which has been advanced by the learned counsel for the applicant, 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. Therefore, reading the contents of FIR, statement and the audit report would show that strong suspicion exists about constituting the offence is made out. In view of this, at this stage, after going through the record, I am not inclined to invoke the extra ordinary jurisdiction of this Court, as *prima facie* it appears that the strong suspicion exists for framing of charges.
10. Consequently, the petition is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE