

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.797 of 2015**

Mahadev Gupta, S/o Raj Kumar Gupta, aged about 33 years, R/o Village –
Sulsuli, P.S.-Trikunda, Revenue Distt.Balrampur, Civil District-Surguja (CG)

---Petitioner**Versus**

State of Chhattisgarh, Through Police Station Incharge of Police Station
Trikunda, Revenue Distt.Balrampur, Civil District-Surguja (CG)

---Respondent

For Petitioner	:	Mr. Bhupendra Singh, Advocate.
For Respondent	:	Mr. O.P.Sahu, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****30/09/2015**

1. By the order impugned dated 23.5.2015, the Additional Sessions Judge, Ramanujganj, in S.T.No.R-25/2015 has framed the charge against the present petitioner for an offence under Sections 302/109 and 120B of the IPC.

2. Mr.Bhupendra Singh, learned counsel appearing for the petitioner would submit that there is no material against the present petitioner to connect him in the aforesaid offences and as such, only on the basis of memorandum statement of co-accused Kaushal Patwa he has been implicated. There is no evidence to hold that he ever paid Rs.50,000/- to Kaushal Patwa, who is said to have caused death of Dharmendra Patwa in the intervening night of 10/11.8.2014 and it is co-accused Kaushal Patwa and Chandradev @ Boda, who have entered into the house of the deceased for the purpose of stealing and caused death of Dharmendra Patwa and as such, there is no any material to connect the applicant for offence under Sections

302, 109 and 120B of the IPC.

3. On the other hand, Mr.O.P.Sahu, learned Government Advocate for the State would oppose the revision and submit that the present applicant abetted/instigated accused Kaushal Patwa to cause death of Dharmendra Patwa and as such, there is sufficient material to frame the charge against the petitioner and the trial Court has rightly framed the charge against the applicant.

4. I have heard learned counsel appearing for the parties and perused the documents annexed with the revision.

5. Before proceeding further, 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:-

6. 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 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

¹ (1997) SCC (Criminal) 584

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.”

7. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**², the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“12. 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.”

8. In **Amit Kapur v. Ramesh Chander and another**³, 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 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

² 2013 Cri.L.J. 754

³ JT 2012 (9) SC 329

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.”

9. Thus, taking into consideration the material collected by the prosecution against the present applicant, the fact that the deceased and the applicant both were running saw mill adjacent to each other, material collected by the prosecution to support the charge that the applicant is said to have hired services of co-accused Kaushal Patwa by making payment of Rs.50,000/- to cause death of deceased Dharmendra Patwa and co-accused caused death of Dharmendra Patwa acting upon such contract in the intervening night of 10/11.8.2014, it cannot be concluded that there is no material for framing of charge against the present applicant. The learned Additional Sessions Judge is absolutely justified in framing the charge for the aforesaid offences against the present applicant.

10. Consequently, the revision being without substance is liable to and is accordingly dismissed without notice to other side at admission stage.

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-