

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Miscellaneous Petition No. 352 of 2016**

Sanjeev Karmakar S/o Pusu Ram Karmakar, aged about 45 years, R/o Sector No. 11, Quarter No.1 - B, Road No. 15, Kushipar, Police Station Kusipar, Bhilai, District Durg (Chhattisgarh).

---- Petitioner

Versus

1. State of Chhattisgarh through Station House Officer, Police Station Simga, District Baloda Bazar, Bhatapara (Chhattisgarh).
2. Balram Dande, S/o Late Lachan Dande, aged about 56 years, R/o Ward No. 14, Kankali Mandir Road, Simga, District Baloda Bazar Bhatapara (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Malay Shrivastava, Advocate
For Respondent/State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/03/2016**

Challenge in the present petition is the framing of charge by the Judicial Magistrate First Class, Simga against the present petitioner for the offence under Section 420/34 of IPC in Criminal Case No. J-566/2015.

2. The allegation against the present petitioner is that he along with one Manoj Ranjan had gone to the house of the complainant and on the pretext of providing employment to his son, extracted an amount of Rs. 8,00,000/- from him. Ultimately when employment could not be provided to the son of the complainant, accused Manoj Ranjan gave an undated cheque of Rs.7,00,000/- to the complainant which is said to have got dishonoured.

3. The petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashment of the charge framed against him on the ground that the complaint as well as the 161 statement made by the

complainant does not disclose any act committed by him so as to implicate him in the said offence.

4. Counsel for the petitioner submits that if the entire version of the complainant is accepted in its face value, the charge under Section 420/34 IPC is not made out against the petitioner as the necessary ingredients are missing for making a case against the petitioner for the said offence. Hence, counsel for the petitioner prays for quashing of the charge registered against the petitioner.

5. However, the State counsel opposes the present petition.

6. A plain perusal of the complaint lodged by the complainant itself it is very clear that the present petitioner was known to the complainant and it is he who had taken the other accused Manoj Ranjan to the house of the complainant. Further, in presence of the petitioner, assurance was given by Manoj Ranjan for providing employment to the son of the complainant and the money was paid to Manoj Ranjan. Similar Statement has been made by the complainant in his 161 Cr.P.C. statement wherein he has categorically stated that it is the present petitioner who had taken Manoj Ranjan to his house and in presence of the petitioner, assurance was given for providing employment and the payment was made to Manoj Ranjan.

7. Taking into consideration the entire facts and circumstances of the case, prima facie, it appears that it was the present petitioner who had taken Manoj Ranjan to the house of the complainant and introduced him to the complainant, therefore, it cannot be said that there is no allegation made out against the petitioner.

8. So far as the law under Section 482 Cr.P.C. is concerned, it has to be

exercised sparingly and cautiously while passing an order and it should not be exercised to stipulate the legitimate prosecution.

9. A plain perusal of the complaint as well as the statement made by the complainant under Section 161 Cr.P.C. clearly depicts of the role played by the petitioner. Whether the charge under Section 420/34 against the petitioner is made out or not is a matter which would be thrashed out before the trial Court. The High Court while exercising the powers under Section 482 Cr.P.C. would not conduct a roving enquiry whether there would be sufficient material available against the petitioner or not.

10. The law so far as the scope of interference with the order of framing of charge is concerned it is by now well settled in catena of decisions by the Hon'ble Supreme Court. The Court below at the time of framing of charge prima facie acts on suspicion in accordance with the complaint that the accused has committed an offence and that Court below would not go into the thorough investigation so as to reach the conclusion whether the charge is made out or not .

11. The Hon'ble Supreme Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Anr** reported in (2012) 9 SCC 460 has very clearly laid down the principle 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 even, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the

facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.

12. Relying upon the judgement in case of **Amit Kapoor and Supra** when prima facie a case is made out by the Prosecution, this Court should not interfere with the same at the stage of framing of charge. Consequently, the Criminal Revision is dismissed being devoid of merit.

13. It is made clear that the finding and observation made by this Court would not be taken adversely by the prosecution at the time of trial.

**Sd/-
(P Sam Koshy)
Judge**