

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 539 of 2004

Judgment reserved on: 17.11.2016

Judgment delivered on: 09.12.2016

1. Raj Kumar Gupta, Aged about 40 years, S/o. Shri Haridas Gupta, R/o. In front of P.G. College, Ambikapur (C.G.)
2. Ashok Kumar Gupta, Aged about 30 years, S/o. Shri Haridas Gupta, R/o. Haldi Badi, Chirmiri, District Korea (C.G.)
3. Arvind Kumar Gupta, Aged about 28 years, S/o. Shri Haridas Gupta, R/o. Haldi Badi, Chirmiri, District Korea (C.G.)

---- Applicants

Versus

1. Kailash Agrawal, S/o. Late Shri Kirodimal Agrawal, Aged about 55 years, R/o. Mahamaya Road, Ambikapur, Police Station- Ambikapur, Police Station Ambikapur, District Surguja (C.G.)
2. State of Chhattisgarh, Through Police Station Ambikapur (C.G.)

---- Respondents

For Applicants	:-	Mr. Jitendra Pali, Advocate
For Respondent No.1	:-	Mr. Manoj Paranjpe, along with Mr. Vikram Dixit, Advocates
For Respondent No.2	:-	Mr. Sanjeev Pandey, G.A.

Hon'ble Shri Justice Anil Kumar Shukla

C A V Judgment

1. By this revision, the applicants have challenged the legality and propriety of the order dated 24.08.2004 passed by 5th Additional Sessions Judge (FTC) Ambikapur in Criminal Revision No. 184/2004, Kailash Agrawal Vs. Rajkumar Gupta and others, modifying the order dated 13.05.2004 passed by Chief Judicial Magistrate, Ambikapur in Criminal Case No. 1616 of 2002, whereby and whereunder the learned

Judicial Magistrate, Ambikapur District Surguja has discharged the applicants of Crime No. 77/2002 registered at Police Station Ambikapur District Surguja for the charges punishable under section 379,420,467,468,471/34 of IPC. By the impugned order the Appellate Court has remitted back the case to the Court of Chief Judicial Magistrate, Ambikapur to decide the criminal case afresh on the basis of material in the charge-sheet. Being aggrieved by the said order of the Appellate Court the applicants filed this revision.

2. The facts briefly stated are as under:-

Respondent No.1/ complainant Kailash Agrawal lodged a written report to Police Station Ambikapur. That some letter pads and blank cheques bearing cheque No. 010190,010193 and 010197 are stolen from his office and the information of stolen cheque was also given in the State Bank of India at Chirmiri and Central Bank of India at Namnikala. On the basis of written report initially a case under section 379 of IPC was registered against the applicants. On investigation it was found that Arvind had made conspiracy against the complainant and played fraud. Subsequently the offences under sections 420, 467, 468, 471/34 were further added against the applicants. During the investigation, it was also found that three cheques bearing Nos. 010190 dated 25.12.2000 for sum of Rs. 15,00,000/-, 010193 dated 28.01.2001 for sum of Rs. 23,15,668/- and cheque No. 010197 dated 18.02.2001 for sum of Rs. 5,00,000/- were presented at Namnikala branch of Central Bank of India and at State Bank of India at Chirmiri Branch. The applicants deposited these cheques for collection of cash in bank which were returned back unpaid due to insufficient amount. The applicants sent separate notices through their counsel regarding dishonour of each

cheque. But no reply has been made by the complainant. Thereafter, the applicants filed separate petition against the complainant on 19.02.2001, 10.04.2001 and 27.04.2001 regarding dishonour of cheques under section 138 of Negotiable Instrument Act before Judicial Magistrate First Class, Manendragarh.

3. After considering the facts and circumstances of the case and perusing the documents presented by both the parties, the trial Court has given its finding that the report lodged by Kailash Agrawal regarding stolen cheque was without any base, therefore, the trial Court had rejected the case of the prosecution and acquitted the applicants from the charges and discharged the applicants vide order dated 13.05.2004.
4. The Respondent N.1 (Kailash Agrawal) aggrieved by the order dated 13.05.2004, filed a criminal revision bearing No.184/2004, in which the Revisional Court had held that at the time of framing of charge considering the defense of the accused and , prima facie, discharged the applicants from the charges is against the law, therefore, the order of the trial court is to be set aside. The Revisional Court given its finding and allowed the revision application of the complainant Kailash Agrawal and remanded back the matter to the Trial Court to decide a fresh on the basis of the material submitted by the prosecution vide order dated 24.08.2004.
5. Being aggrieved by the order 24.08.2004, the applicants have filed the present Criminal revision.
6. Question for consideration before this Court is whether the order dated 24.08.2004 passed by the IVth Additional Sessions Judge (FTC) Ambikapur suffers from illegality or impropriety.

7. I have heard learned counsel for both the parties and have perused the records.
8. Learned counsel for the applicants argued that complainant Kailash Agrwal had given three post dated cheques and on presentation, the said cheques were dishonoured due to insufficient funds. The applicants sent notice to Kailash Agrawal and filed complaint against him under the provisions of Negotiable Instruments Act. Learned counsel for the applicants further submitted that complainant Kailash Agrawal has filed false criminal case against the applicants on the allegation that they had stolen the cheques and made certain entries in their favour to withdraw the amount. He further argued that Judicial Magistrate First Class, Manendragarh after taking cognizance had issued notices to Kailash Agrawal and had finally discharged the applicants from the criminal case No. 1616 of 2002. He further submits that the order passed by the IVth Additional Sessions Judge (FTC) Ambikapur suffers from illegality and impropriety, therefore, the order of the Revisional Court dated 24.08.2004 be set aside and the order of the Trial Court dated 13.05.2004 be confirmed.
9. Learned counsel for the applicants in support of his argument placed reliance in the matter of **State of Tamil Nadu v. N. Suresh Rajan and others, (2014) 11 SCC 709.**
10. Mr. Manoj Paranjpe, along with Mr. Vikram Dixit, learned counsel for the respondent No.1 argued that learned Sessions Judge rightly held that the order of discharged passed in favour of the applicants is not sustainable in the eye of law. He further argued that at the stage of framing of charge, the documents and the defence of the accused cannot be considered. Learned counsel for the respondent No.1 placed

reliance on **State of M.P. v. Nijammuddin, AIR 1977 SC 2018** and **Ratanlal v. Mohanlal 1990 MP weekly note 163**. In these cases it is held that at the stage of framing of charge, the documents and the defense of the accused can not be considered. The IVth Additional Sessions Judge (FTC) Ambikapur by placing reliance in the matter of **State of Madhya Pradesh v Nizamuddin** (supra) in which it has held that at the time of framing of charge the material and documents available on record and on the basis of which it is not relevant and, thus, discharged the accused persons cannot be sustained and deserves to be quashed.

11. Learned counsel for the respondent No. 1 has placed the reliance in the cases **Central Bureau of Investigation Hyderabad v. K. Narayana Rao (2012)9 SCC 512** and **Suryalaxmi Cottom Mills Limited v. Rajvir Industries Limited and others (2008) 12 SCC 678**.

12. Section 239 of the Cr.P.C. is relevant in this case which reads thus:-

“ When accused shall be discharged:- If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

13. Section 173 of the Cr.P.C. is relevant in this case which reads thus:-

7. Report of police officer on completion of investigation(1)
Every Investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the Officer in charge of the Police Station.

(2) (I) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government.

14. Learned counsel for the respondent No. 1 has placed the reliance in support of his contention in the matter of **State of Bihar v. Ramesh Singh, 1977 4 SCC 39**; while considering the very same provisions i.e. framing of charge and discharge of accused has held in para 19.

19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

15. In the matter of **Central Bureau of Investigation, Hyderabad v. K. Narayana Rao, 2012 9 SCC 512**, the Supreme Court has considered various aspects of the case at para 21.

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerges:-

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- (vi) At the stage of Section 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.
- (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

16. It is clear from the above provision that the documents annexed with the Police Report and after hearing the prosecution, the decision is to be taken and the reasons must be recorded.
17. So far as the order dated 13.05.2004 passed by Chief Judicial Magistrate, Ambikapur is concerned, while disposing of criminal case No. 77/2002 registered in Police Station, Ambikapur filed along with final report. The trial Court has not taken any cognizance and acquitted the applicants and passed order of discharge which cannot come under the purview of section 239 CrPC, whereas the order passed by the IVth Additional Sessions Judge (FTC) Ambikapur on 24.08.2004 is well reasonsed order and in accordance with the law.
18. The defense taken by the revisioner under section 138 Negotiable Instrument Act, the documents prodced by revisioner was not proper for consideration while framing of the charge only those document is to be seen annexed with the order sheet.
19. On appreciation of entire evidence available on reocrd and on the basis of said discussion and the case law cited above, I do not find any illegality or impropriety in the order dated 24.08.2004 passed by the 5th Additional Sessions Judge (FTC) Ambikapur. Therefore, the order dated 24.08.2004 is affirmed and the instant criminal revision being devoid of any substance is hereby dismissed.

Sd/-

(Anil Kumar Shukla)
Judge