

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 919 OF 2016

Tulsiram S/o Nandlal Jaiswal, aged about 55 years, R/o village Belgahna, Police Station Kota, District (Revenue and Civil) Bilaspur (CG) At present Old Bus Stand, Bilaspur, Tehsil and District (Revenue and Civil) Bilaspur (CG).

... Petitioner

Versus

State of Chhattisgarh through Police Station, Kota, District (Revenue & Civil) Bilaspur (CG).

... Respondent

For Petitioner	:	Shri Anand Kesharwani, Advocate.
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29.08.2016

1. The present petition under Section 482 Cr.P.C. has been preferred assailing the order dated 05.07.2016 passed by the Sessions Judge, Bilaspur, in Criminal Revision No.86/2016. Vide the said impugned order, the Sessions Judge exercising the revisional powers has rejected the revision petition preferred by the petitioner herein affirming the order dated 30.03.2016 passed by the Judicial Magistrate First Class, Kota, in Criminal Case No.168 of 2014 rejecting the application under Section 239 Cr.P.C. seeking discharge of the petitioner from the criminal case.
2. The relevant facts for adjudication of the case is that, a written complaint was lodged at Police Station Kota, on the basis of which offence under Section 297 and 341 IPC was registered against the

petitioner. It was alleged against the petitioner of having trespassed into the burial ground and also having put wrongful restrain on the public pathway. After the case was registered, the petitioner is said to have sought for his discharge by moving an application under Section 239 Cr.P.C. The said application of the petitioner stood rejected vide order dated 30.3.2016 by the JMFC, Kota on the ground that there were prima facie sufficient material available against the petitioner in the complaint and which could also be gathered in the course of inquiry.

3. The said order dated 30.3.2016 was subjected to challenge in a revision petition which was registered as Criminal Revision No.86/2016 and the revisional court also accepted the reasons and reasoning given by the trial court while rejecting the application under Section 239 CrPC and rejected the revision vide order dated 5.7.2016 leading to filing of this criminal revision.
4. Learned counsel appearing for the petitioner submits that there was no specific material available to proceed against the petitioner while rejecting the application under Section 239 Cr.P.C. The court below has committed an error while not appreciating the fact that there was no road reflected in the spot map prepared by the Patwari. It was also contended that there was no sufficient evidence available against the petitioner so as to bring home the offence under Section 297 and 341 of IPC. The petitioner also had disputed the finding of the Patwari that the property in dispute was a grass land. According to him, all these contentions are totally baseless and without any substantial piece of

evidence, and therefore, the court below could not have mechanically rejected the application under Section 239 Cr.P.C. and prayed for quashing of the entire criminal case.

5. The State counsel, however, opposes the submissions made by the counsel for the petitioner and submitted that there are prima facie more than sufficient piece of evidence which has come on record by which an offence is reflected to have been committed by the petitioner. It is also contended that in addition, there is also more than a couple of witnesses who have deposed before the investigating agency so far as the offence committed by the petitioner is concerned. Thus, prayed for rejection of the petition.
6. Having heard the counsel for the parties and having perused the record, in addition to the submissions made by the State counsel, what is reflected from the record is that there is statement of eyewitnesses Karesh Shrivastava and Indu @ Indresh Mevra. Further there are certain documents filed along with petition which also reflects the fact that infact there was a pathway over which the petitioner was trying to interfere. These are facts which are to be determined by the court below after recording of the evidence. Now, whether there is sufficient evidence and the said evidence are cogent enough to convict the accused is concerned, are all matter of evidence which could not and cannot be looked into by the court of law at the initial stage, where the only consideration to be taken note of is whether prima facie offence is made out or not.

7. For the purpose of framing of charge all that the Trial Court has to see is whether on the basis of the materials collected during the course of investigation a prima facie case is made out or not. Even if there is a strong case of suspicion made out even then the Court is justified in framing of the charge.
8. So far as the law under Section 482 CrPC is concerned, it is by now well settled proposition that while considering the case for quashing of the Criminal proceedings the court should not “kill a stillborn child” and appropriate prosecution should not be stifled unless there a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein.
9. In **Amit Kapoor Vs. Ramesh Chander and Another**, (2012) 9 SCC 460, the Supreme Court has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under 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. 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.

10. This view has further been reiterated by the Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora and others**, reported in (2013) 10 SCC 581, wherein it has been held :

“It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.”

11. In the case of **N. Soundaram Vs. P.K. Pounraj and Another**, reported in (2014) 10 SCC 616, the Supreme Court in paragraph 13 has categorically held that :

“13. It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate

prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

- 12.**For the foregoing reasons and in view of the aforesaid legal pronouncements made by the Supreme Court, this Court is of the opinion that there is no illegality or infirmity committed by the Court below while framing of charge against the Petitioner calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.
- 13.**The petition being devoid of merit thus is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE