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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1041 of 2016**

- Shatruhan Prasad Verma S/o Shri Samaru Ram Verma Aged About 49 Years Occupation- Service, Working As Project Officer, Zila Panchayat Kawardha, District Kabirdham, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Collector- Cum- District Magistrate, Kawardha, Tehsil Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.
2. Rajju Chandravanshi S/o Ram Ratan Chandravanshi Aged About 37 Years R/o Village Aanchhi, Police Station Pipariya, Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.
3. Dhruv Ram Sahu S/o Late Shri Dhanaram Aged About 66 Years R/o Village Rabeli, Police Station Pipariya, Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.
4. Vijay Kumar Soyam S/o Shri Ram Bhau Soyam Aged About 44 Years R/o Village Rangdai, Police Station Ratanpur, Civil & Revenue District Bilaspur, Presently Resident Of Government Quarter, Near Janpad Panchayat, Kawardha, Civil & Revenue District Kabirdham, Chhattisgarh.

----Respondents

For Petitioner	Shri R.S. Marhas, Advocate.
For Respondent No.1/State	Shri Vaibhav A Goverdhan, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23/09/2016**

1. The present CrMP has been preferred under Section 482 seeking for quashment of the criminal prosecution initiated against the present Petitioner under Section 409/34 IPC.
2. The challenge in the present Petition is the rejection of the Criminal

Revision preferred by the Petitioner against the framing of charge by order dated 24.06.2015 in Criminal Revision 52/2014. The said Revision was preferred assailing the charges for the offence under Section 409/34 IPC which were framed against the present Petitioner on 08.09.2014 by the Court of Chief Judicial Magistrate, Kawardha in Misc. Criminal Case 1245/11.

3. Learned Counsel for the Petitioner submits that the entire criminal prosecution against the present Petitioner is bad in law for the reasons that he was not involved in any manner in execution of the construction work which was later found to be of inferior quality on account of which the criminal case has been made out therefore he sought for quashment of the entire criminal prosecution. According to the Counsel for the Petitioner in the capacity of the Chief Executive Officer all that the present petitioner has done is release of payment that were made to the agency and which otherwise is part of his responsibility in discharge of his official duties conferred upon him as a Chief Executive Officer. It was further contended that he was not responsible for execution of the construction work nor had he any role played for the said construction therefore prayed for quashment of the framing of charge as well as order passed by the Revisional Court rejecting the revision.
4. Learned State Counsel however opposes the petition on the ground that there is admission on part of the Petitioner of having released the payment to the agency which had got the construction done is

sufficient indication to prima facie establish some role played by the present Petitioner. It was further contended by the State Counsel that being Chief Executive Officer it was the responsibility of the Petitioner to supervise all the works which have been undergoing in his area. Thus, the Court below on the basis of prima facie material available in the charge-sheet was justified in framing charge against the present Petitioner and thus prayed for rejection of the Petition.

5. Having considered the submissions made on either side and on perusal of the record this Court is of the opinion that firstly the charges in the instant case was framed as early as on 08.09.2014 and against which a Revision was preferred and the Revision Petition also was rejected on 24.06.2015. it is only after about more than 15 months' period that the present CRMP has been preferred seeking for quashment of the entire proceedings. Thus, there is an unexplained inordinate delay on part of the Petitioner in assailing the order dated 24.06.2015. Further it emerges from the fact that the present Petitioner does not dispute the fact that he was the Chief Executive Officer at that relevant point of time and that the payment to the construction agency was released under the signatures of the Chief Executive Officer i.e. the present Petitioner. This by itself prima facie shows of some role played by the Petitioner in the said transaction. So far as to the fact whether there was any malafide intention or any role alleged to have played by the Petitioner in the inferior quality of the construction work are all matters which can be decided only after the evidence are recorded on behalf of the

prosecution and where he would also get chance to bring evidence in his defence and also to cross examine the prosecution witnesses. In the opinion of this Court the Petition suffers from delay and laches.

6. Further, the Court below at the stage of framing of charge would not conduct a roving inquiry to thrash out whether there is any material available for conviction or not. All that the Court below has to see is whether there was prima facie material available in the charge sheet before the Court below for framing of charge against the Petitioner. This Court does not find any illegality and infirmity on part of the Magistrate in framing of charge against the Petitioner under the available materials in the charge-sheet dated 08.09.2014.
7. The Revision Petition accordingly being devoid of merits stands dismissed.
8. Learned Counsel for the Petitioner further assailing the proceedings before Court below submits that the prosecution against the present Petitioner is not sustainable for want of prior sanction from the appropriate Government.
9. This aspect shall also be considered by the Court below while recording of the evidence for the reason that, in view of the recent decision of the Hon'ble Supreme Court, prima facie since the allegation against the present applicant is for an offence under Section 409/34 IPC the same cannot be considered to be one which he has performed in the discharge of his official duties, therefore the requirement of previous sanction before prosecution may not be

required.

10. With the aforesaid observations the present Cr.M.P. stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

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