

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1225 of 2016**

Sanjay Somawar S/o late Shri Bhalchand Somawar, aged about 58 years,
R/o Jagatpur, Raigarh, Tehsil and District Raigarh (CG).

---- **Petitioner**

Versus

State of Chhattisgarh Through Station House Officer, Police Station Pusaur,
District Raigarh (CG).

---- **Respondent**

For Petitioner	:	Shri Amrito Das, Advocate.
For Respondent/State	:	Shri SRJ Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/11/2016

1. The present petition under Section 482 CrPC has been filed seeking for quashment of order dated 31.08.2016 passed by the Additional District Judge (FTC), Raigarh, in Criminal Revision No.13/2016. Vide the said impugned order, the court below has framed the charge against the petitioner for the offence under Sections 420,467,468,471 and 120-B IPC read with Section 34 of the IPC.
2. The allegations against the petitioner is that, while performing his duty as Tehsildar, Pusaur, he is said to have certified the Kisan Kitab in respect of one Rajesh Kumar Goyal. The property which stood originally in the name of Rajesh Kumar Goyal was further partitioned among the family members of Rajesh Kumar Goyal due to which Kisan Kitab was prepared and which is allegedly certified by the

petitioner in the capacity of Tehsildar. Based on the said Kisan Kitab it is said that Rajesh Kumar Goyal and his family members have taken benefit from the government as well as from the National Thermal Power Plant for which the said land of Rajesh Kumar Goyal was acquired.

3. According to the petitioner, framing of charge against the petitioner is bad in law for the reason that original Kisan Kitab was not seized by the prosecution and in the absence of any original Kisan Kitab, the charge of having certified the same could not have been framed by the court below. The signature on the said certification of the Kisan Kitab itself is disputed by the petitioner. The trial court at the first instance vide order dated 03.12.2015 has ordered the prosecution to produce the original Kisan Kitab which the prosecution has failed and finally on 08.01.2016 the trial court on verification of the case diary found that infact the original Kisan Kitab has not been seized at all by the prosecution. The trial court has proceeded further with the case ignoring the observations made on 03.12.2015 as also on 08.01.2016 and has framed the charges as aforementioned.
4. This framing of charge was put to challenge in a revision petition. The revisional court also affirmed the order of framing of charge and has dismissed the revision petition leading to filing of this petition under Section 482 CrPC.
5. Learned counsel appearing for the petitioner assailing the two orders submits that the court below was bound by the orders passed by it on

03.12.2015 and 08.01.2016 and in the absence of the original Kisan Kitab, the charge could not have been framed for the simple reason that the trial court ought to have first prima facie been convinced with the contents of the allegations levelled against the petitioner. Once the trial court itself has ordered the prosecution to produce the original Kisan Kitab, it could not have been framed charge unless the original of the same was produced before the court and for this reason he submits that the charges could not have been framed against the petitioner for having certified the Kisan Kitab of which the original was not available with the prosecution. Thus, prayed that the two orders passed by the courts below may be set aside and the petitioner be discharged from the said offence.

6. The State counsel however opposes the petition on the ground that prima facie there is material available on record to frame charge against the petitioner. During the course of investigation, the investigating agency could obtain photocopy of the Kisan Kitab and where the certification of the petitioner in the capacity of being Tehsildar, Pusaur is reflected and it is sufficient indication of his being involved in the commission of the said offence. It is further submitted that it is a settled law that at the stage of framing of charge, all that the court has to see is whether there are sufficient materials available before the court below for framing of charge and which from the contention of the petition as well as the document enclosed along with the petition itself is evidently established. Thus, prayed for dismissal of the petition.

7. Having considered the rival contentions put forth on either side and on perusal of record, the undisputed facts of the instant case is that, the petitioner was working as Tehsildar, Pusaur and that the land belonging to Rajesh Kumar Goyal was acquired by the State Govt. to be handed over to National Thermal Power Plant. It is also not in dispute that the said property originally belonged to Rajesh Kumar Goyal. Before the acquisition proceeding started, the said property was partitioned among the other family members of Rajesh Kumar Goyal and appropriate proceedings were drawn before the Gram Panchayat, the revenue authority I.e Patwari and thereafter the matter was placed before the present petitioner.
8. Though the petitioner disputes is signatures being put on the said Kisan Kitab in respect of document pertaining to the partition of the property of the Rajesh Kumar Goyal, but in the course of investigation it was found that the document available with the case diary was that of photocopy of the Kisan Kitab with the signature of the present petitioner.
9. From these materials available in the case itself prima facie it appears that some role seems to have been played by the petitioner. May be in the capacity of the Tehsildar on the recommendation of the Patwari. Thus, this court has no hesitation in reaching to the conclusion that prima facie the ingredients that are required for framing of charge is made out. All the other aspects which the petitioner intend to assail are his defence and which can only be looked into after the evidence of either side are adduced and which cannot be looked into at this

stage.

10. Now, whether there is sufficient evidence and the said evidence are admissible and are cogent enough to convict the accused, 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. 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.
11. So far as the law under Section 482 CrPC is concerned, it is by now a 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.
12. In **Amit Kapoor Vs. Ramesh Chander and Anr**, (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.

13. 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.”

14. 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.”

15. 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 Courts 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.
16. The petition being devoid of merit thus is liable to be and is accordingly dismissed.
17. Needless to mention that the observations/opinion made by this court while passing this order shall not have any bearing on the final outcome of the case. The court below shall decide the case purely in accordance with law and evidence which is brought before the court.

Sd/-
(P. Sam Koshy)
Judge