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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.25 of 2016

- Raju @ Rajesh Yadav S/o Balakram Yadav Aged About 30 Years Occupation Franchisee Of Electricity Department, R/o Sonumuda Near Kali Mandir, Raigarh, Tahsil & District Raigarh Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Anr. Through District Magistrate, Raigarh Chhattisgarh.
2. Ganesh Dey S/o. Late SK Dey, aged about 40 years, R/o. Sonumuda, Raigarh, Tahsil & District Raigarh (CG)

---- Respondents

Shri Vineet Kumar Pandey, counsel for the petitioner.
Shri Lav Sharma, Panel Lawyer for the State/respondent No.1.
Shri Pragalbha Sharma, counsel for respondent No.2.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

11.4.2016.

Heard.

2. Brief facts required for the adjudication of the instant petition is that Criminal Case No.1037/2013 (State **vs**. Raju @ Rajesh Yadav) is pending before the Chief Judicial Magistrate Raigarh (Chhattisgarh). Police of Kotwali investigated criminal case against the present petitioner for the offence under Sections 420, 406, 294 and 506 of the Indian Penal Code. On 28.4.2014, the trial Court heard both the parties before charge and held that there is no prima facie material to frame charges against present petition under Sections 420 and 294 of the Indian Penal Code and further held that there are sufficient material to frame charges against the petitioner for the offence under Section 406 and 506B of the IPC. Thereby discharged the present petitioner for the offence under Section 420, 294 of the IPC and framed charges against him under Sections 406 and 506 B of the IPC and fixed the matter for recording the evidence. Against the said order, the petitioner/accused preferred Criminal Revision No.202200000992014 before the Second Additional Sessions Judge, Ragiagrh. The appellate Court after hearing the parties held that there are sufficient material against the petitioner for proceeding under Sections 406, 506 B of the IPC and hence affirmed the order passed by the trial Court and dismissed the revision as not maintainable. Against the said order, the petitioner has filed the instant petition and prayed that by invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), the order dated 28.4.2014 passed by the trial Court and the order dated 08.10.2014 passed by the revisional Court may be quashed and petitioner may be discharged for the offence under Sections 406 and 506B of the IPC as there is no any case made out against present petitioner.

3. On behalf of the respondent the petition was opposed.

4. Heard counsel for the petitioner finally at the motion stage itself.

5. Counsel for the petitioner submits that the respondent No.2 has filed the complaint case before Chief Judicial Magistrate for the offence under Section 420, 407 and 294 of the IPC on 10.01.2013. Direction made in this behalf by the concerned trial

Court to the police to investigate the matter and proceed further under Section 156(3) of the Code. On the basis of the said order, the Police registered First Information Report and after investigation filed charge sheet against the present petitioner. Learned counsel for the petitioner submits that the petitioner, respondent No.2 and one Santosh Kumar entered into an agreement. As per para 1 of the agreement, franchisee was given to the present petitioner on 12.5.2011. As per para 3 of the said agreement, all the above three parties shall deposit equal amount for the fixed deposit of Rs.9,18,066/- as guarantee. It is further mentioned that if for any reason franchisee agreement is broken, then the fixed deposit amount along with interest, security amount received to the present petitioner shall disbursed with all the three as their respective shares. At para 11 it was agreed by all the parties that parties aggrieved shall enforce their right through the court and erring parties shall be responsible for the payment of litigation cost. (It is not mentioned in the entire agreement regarding that only civil litigation will lie). It is further submitted that respondent No.2 has filed a civil suit for recovery of his share against the petitioner, which is pending. As per para 9 of the said agreement, the petitioner got the franchise for two years. As per the agreement franchisee was till 20.5.2013. On the other hand, respondent No.02 has filed complaint case on 10.01.2013 before expiry of the period of such franchisee. Learned counsel further submits that the said franchise money is still in the bank as fixed deposit. As the franchise was renewed for more two years he has not withdrawn the said money. The police by filing the said charge sheet has not investigated on the fact that whether the said money is still deposited or not. There is no any evidence in the charge sheet that the said fixed deposit was taken and the money was withdrawn by the petitioner. The matter relates to civil litigation. Civil suit is pending. Hence, the order passed by the trial Court for framing of the charges and affirmed by the revisional court may be quashed.

6. On perusal of the impugned order passed by the trial Court dated 28.4.2014, it appears that the petitioner never informed the trial Court that the said amount is still a fixed deposit. The petitioner had not filed any written statement in the said civil suit for the pleadings that the said fixed deposit is still with the bank. It is informed that written statement is not yet filed on behalf of the petitioner.

7. On perusal of the facts, filing of the complaint case before the expiry of the said franchisee is not a fact in the matter as the charge sheet has been filed much after the expiry of the initial period of the franchise. Also the police on investigation collected evidence for the offence under Section 506B of the IPC. The Court below appreciated that evidence regarding the offence under Section 506B of the IPC prima facie exists. So far as the charges under Section 406 of the IPC are concerned, the petitioner had not informed the criminal court or not adduced any documents to show that the said security money is still is in the bank and the same is not withdrawn, which is a core issue of the matter.

8. As the the petitioner failed to demonstrate the core issue in his favour and also on perusal of the entire material goes to show that there are prima facie evidence against the petitioner to prosecute him under Sections 406 and 506B of the IPC. On due consideration, I do not see any reason to invoke my authority under Section 482 of the Code to quash the charges or to quash the order of the trial Court along with the order of the revisional court regarding framing and affirmation of the charges. Instant petition thus fails and is dismissed accordingly.

9. Petition dismissed. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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