

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 1200 OF 2015

Kailash Agrawal S/o Late Ramnivas Agrawal Aged About 52 Years
R/o Modi Plaza Flat No. 405 Jagatpur, Raigarh, Tahsil & Distt.
Raigarh Chhattisgarh.

... Petitioner

Versus

1. State of Chhattisgarh Through the District Magistrate, Raigarh, Distt. Raigarh (CG).
2. Arvind Kumar Garg S/o Shri Shyam Sunder Garg, aged about 38 years R/o Old Sadar Bazar, Ganja Chowk, Behind Gopal Mandir, Raigarh.

... Respondents

For Petitioner	:	Shri Awadh Tripathi, Advocate.
For Respondent-State	:	Shri Rajendra Tripathi, Panel Lawyer.
For Respondent No.2	:	Shri Ashish Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2016

1. The present petition under Section 482 CrPC has been preferred challenging the order dated 18.11.2014 passed by the Additional Sessions Judge, Raigarh, whereby the revision petition preferred by the petitioner against the order of Chief Judicial Magistrate, Raigarh, in Criminal Case No. 1496/2012 framing of charge for the offence under Sections 294, 452 and 506-B IPC has been affirmed.
2. Learned Counsel for the petitioner assailing the order impugned submits that if the complaint and statement recorded in the course of investigation is taken into account, offence under Section 294

IPC is not made out and so far as section 452 IPC is concerned, the counsel for the petitioner submits that at best it may be a case where the offence may not fall primarily under Section 452 IPC, but may be one under Section 451 IPC. He further submits that for framing of charge under Section 294 IPC i.e. of using abusive language, the important ingredient which is necessary is that the said use of abusive language has to be made at a public place whereas, in the instant case, the incident has taken place inside the house of the complainant, and therefore, it cannot be brought within the purview of public place. As such, offence under Section 294 IPC is also not made out. Therefore, the orders impugned i.e. 24.11.2012 passed by the Chief Judicial Magistrate as also the order dated 18.11.2014 passed by the revisional court deserve to be quashed.

3. It is further submitted that the entire case has been made as a counter attack as firstly the complaint was lodged by the petitioner against the respondent No.2 and therefore counter the same he has been falsely implicated by the respondent No.2 by lodging the complaint. According to the petitioner, there is a civil dispute between the parties for which the petitioner has also filed a Civil Suit which is pending consideration before the civil court at Raigarh.
4. Learned State Counsel vehemently opposes the Petition and submits that prima facie reading of the complaint itself would reflect that there have been serious allegation levelled by the complainant

in writing against the present Petitioner and this was precisely the reason which have been taken by the Court below while framing of the charges.

5. Learned Counsel for the Respondent No.2 referring the statement of witness Surendra Sahu submits that the said witness has made specific averment that after hot talk inside the house of the complainant, the petitioner is said to have abused the complainant from front of his house also by using filthy language which shows that the said filthy language was used by the petitioner outside the house of the complainant which would fall within the ambit of public place.
6. Having considered the rival contentions put forth by the either side, this court is of the opinion that there is no illegality in the order impugned framing charge under Sections 294,452 and 506-B IPC. So far as Section 294 IPC is concerned. The statement of Surendra Sahu itself clearly shows that the petitioner had used filthy and abusive language from front of the house of the complainant. So far as offence under section 452 IPC is concerned, even if for the sake of argument we assume that offence under Section 452 is not made out, the court has all the powers after the trial is concluded to hold that the petitioner was guilty of offence under Section 451 IPC.
7. Whether the averments made by the complainant does not constitute offence or not, or whether there are cogent material on the part of complainant to establish these charges are all the facts which are to be taken note of during the course of trial, where the

parties would get an opportunity to establish their respective case by leading cogent evidence. This Court would not at this stage consider the evidence which has come on record threadbare.

8. So far as the law under Section 482 CrPC is concerned 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 are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation has some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the un-controverted allegation as made, prima facie establishes 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.
9. The Supreme Court in case of **N. Soundaram Vs. P.K. Pounraj and Another** reported in **(2014) 10 SCC 616** 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.”

10. For the foregoing legal position as a sans it to do, this Court is of the opinion that there have been sufficient materials brought by the complainant before the Court below, on the basis of which charges have been framed and as such it can not be said to be contrary to the evidence or bad in law in any manner nor can it be said to be a perverse finding of the facts by the Court below.
11. For the aforesaid reasons the present Cr.M.P. being devoid of merit, the same is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE