

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 431 OF 2016

1. Janki Ram, S/o Sarjunath Basai (wrongly given as Sarju Ram Bisai), aged about 75 years
2. Kursoram, S/o Sarjunath Basai (wrongly given as Sarju Ram Bisai), aged about 65 years
3. Khembati, W/o Baldeva Bisai, aged about 60 years
4. Purshotam, S/o Ghasiram Sethia (wrongly given as Ghasiram Bisai), aged about 40 years
5. Ram Prasad, S/o Dumari Bisai, aged about 33 years
6. Dharam Das, S/o Tulsiram Mahara, aged about 40 years
7. Sanjay, S/o Damrudhar Bisai, aged about 41 years
8. Damrudhar, S/o Jankiram Bisai, aged about 58 years
9. Smt. Kamlavati, W/o Lakshaminarayan Sethia, aged about 70 years
10. Sukru, S/o Sukman, aged about 60 years
11. Kurso Bisai, S/o Chaturdhan Bisai, aged about 75 years
12. Radheyshyam Sethia, S/o Ghasiram Sethia, aged about 50 years
13. Ramnarayan Bisai, S/o Jankiram Bisai (wrongly given as Kumbhkaran Sethia), aged about 45 years
14. Ghasi Ram Sethia, S/o Kumbhkaran Sethia, aged about 56 years
15. Arjun Bisai, S/o Sarjunath Bisai, aged about 54 years
16. Tirupati Sethia, S/o Ghasiram Sethia, aged about 32 years
17. Santosh Kumar Bisai, S/o Jagarnath Bisai (wrongly given as Jaggannath Bisai), aged about 35 years
18. Smt. Satyavati Sethia, W/o Radheyshyam Sethia, aged about 40 years
19. Vijay Kumar Bisai, S/o Jaggannath Sethia, aged about 35 years

All R/o Village Dhanpunji, Sundipara, Police Station- Nagarnar, District Bastar (C.G.)

... Petitioners

Versus

The State of Chhattisgarh, through District Magistrate, District Bastar (C.G)

... Respondent

For Petitioners	:	Mr. D.K. Gwalre, Advocate.
For Respondent-State	:	Mr. Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

29/07/2016

1. The present petition under Section 482 CrPC has been filed assailing the order dated 23.11.2015 passed in Criminal Revision No. 30 of

2015 and Criminal Revision No. 31 of 2015 by the Second Additional Judge, Bastar (Jagdalpur).

2. By the said impugned order, the Revisional Court had confirmed the order passed by the Judicial Magistrate First Class, Jagdalpur in Criminal Case No. 658 of 2015 on 2.9.2015 framing the charge against the present Petitioners for the offence punishable under Section 420 IPC.

3. Learned Counsel for the Petitioners submits that his challenge to the framing of charge is on the very limited ground of the prosecution having not established the fact that the Petitioners were not entitled to sell their paddies as well as the seeds to two different Societies and in the absence of any such evidence available with the prosecution whereby the farmers/agriculturists are prohibited from selling their paddies to two different Societies, the charge against the Petitioners could not have been made out and thus the order of the Trial Court at the first instance of framing of charge as well as the order of the Revisional Court rejecting the revisions against framing of charge are bad in law and deserve to be set aside/quashed.

4. As per the Counsel for the Petitioners, the first allegation against them is that they have sold the paddy much more than which could be produced from the area of land reflected in their Rin Pustika belonging to each one of them. The second allegation against them is that they have in addition of selling all these paddies to the Society to which they are registered i.e., Paddy Procurement Centre Bamhni, they have also sold the paddy to Kokamunda Beej Nigam, which again is not permissible under the rules and regulations.

5. Counsel for the Petitioners further submits that firstly there is no such restriction under the rules and regulations, and secondly what the Petitioners have sold is paddy to the Paddy Procurement Centre, Bamhni

and what has been sold to Kokamunda Beej Nigam is the seeds and these are two different articles and therefore even if there is a restriction of selling paddies to two Societies but there is no restriction to sell seeds to Beej Nigam.

6. Learned Counsel for the State however opposing the petition submits that the allegation against the Petitioners is that they have in the process of selling paddies and seeds to two different Centers have shown production of much more paddies and seeds than which could have been produced from the fields/agricultural land belonging to each of the Petitioners, which itself is prima facie case against them that they have manipulated the documents in conspiracy with the other accused persons of the Societies and have collected huge amount of money by this act of defrauding the State of its exchequer. He further submits that the Petitioners could not have sold their products to two different Centers which again is bad in law and therefore their petition deserves to be dismissed.

7. However, when this Court went through the records in addition to the allegations that the State Counsel had made it is also reflected from the case diary that in many of the cases these agriculturists have provided only one same Bank account for depositing of the money for the purchase of paddy/seed, which is otherwise impermissible under rules. Further, it is found that there was also material suppression of the fact of what has been sold at one Centre is not reflected in the books and without showing these entries sale has also been shown to have been made at the other Center, which again prima facie appears to be an act done deliberately. Thus, from the prima facie reading of the FIR itself there appears to be some materials available against the Petitioners on the basis of which the

Trial Court framed the charge under Section 420 IPC against the Petitioners.

8. So far as the law in respect of framing of charge is concerned, the law is by now well settled. The Supreme Court in a series of judgments has held 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 uncontroverted 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 **Amit Kapoor Vs. Ramesh Chander and Anr**, reported in (2012) 9 SCC 460, 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. 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.”

11. 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 Trial Court as well as by the Revisional Court calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.

12. The petition being devoid of merit thus is liable to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge