

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 220 of 2015**

Gous Mohammed Beg @ Munna S/o Rahmat Beg Aged About 53 Years R/o Village Pandadah, Police Station Khairagarh, Civil And Rev. Distt. Rajnandgaon C.G.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Khairagarh, Civil And Rev. District Rajnandgaon C.G.

---- Non-applicant

For Applicant:	Mr. Rakesh Pandey, Advocate
For Non-applicant/State :	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****21.06.2016**

1. The present revision has been preferred challenging the order dated 20.02.2015 passed by the Additional Sessions Judge, Khairagarh in Sessions Trial No. 18/2014. Vide the said impugned order the trial Court has framed charges against the present Applicant for offence punishable under Section 302 read with Section 34 of the I.P.C.

2. Assailing the impugned order learned Counsel for the Applicant submits that a perusal of the record would clearly show that there was absolutely no overt-act on the part of the present Applicant for the constitution of the offence under Section 302 read with Section 34 of

the I.P.C. He categorically draws attention of this Court towards statement of the witnesses wherein it reflects that the deceased Sakir Khan died because of an assault made with a *lathi* by one Shakir Ali, that too only by one blow was inflicted upon the deceased on his head.

3. Learned Counsel for the Applicant further submits that a perusal of the record would also reflect that there was absolutely no *mens rea* on the part of the present Applicant nor was a common intention on his part. He also contended that it appears from the entire case of the prosecution and the allegation which are levelled the present Applicant has not played any role what so ever either in the assault on the deceased nor is it the case of the prosecution that the present Applicant had gone to the deceased and committed the offence, and therefore the charges framed by the Court below is not made out and deserves to be set aside and the petitioner is entitled for discharge.

4. Learned State Counsel however opposing the Revision Petition submits that it is framing of charge only which has been challenged in the present Review Petition. At the stage of framing of charge the Court is to see whether from the facts available on record one could *prima facie* make out a case or not and even if there is slightest of suspicion, the Court would have been justified in framing of charge for the particular offence.

5. Learned State Counsel further relies upon the statement of the witnesses which has been recorded under Section 161 of the Cr.P.C.

emphasizing that from the statement of the witnesses itself it is clear that there was some quarrel that took place between the present Applicant and the deceased. In the course of quarrel Shakir Ali who was holding a lathi, gave one blow with the lathi on the head of the deceased from back side and on the blow Sakir Khan fell unconscious and thereafter he was taken to hospital where he succumbed to the injuries after about 18 days. Therefore, in the given facts and circumstances of the case there is no illegality or perversity committed by the Court below while framing of the charge under Section 302 read with Section 34 of the I.P.C.

6. Considering the rival contentions and perusal of the record that the statement recorded under Section 161 of the Cr.P.C. would clearly indicate that there was a quarrel going on between the present Applicant and the deceased and that while the quarrel was going on, the nephew of the present Applicant Shakir Ali who was armed with a lathi assaulted the deceased from back side and gave one blow with the lathi, consequent to which the deceased initially sustained an injury and later on succumbed at Hospital after about 18 days. From the perusal of the record available there is a clear indication that quarrel was going between the present Applicant and the deceased and it is in the course of the quarrel that the assault took place, now whether the present Applicant had intention to kill or whether there was no overt act or there was no common intention on part of the accused persons are all that matters which are to looked by the Court after the evidences are

recorded by the prosecution before the Court. So far as framing of the charge is concerned all that the Court has to look into is whether in the available record of the case diary prima facie there is material against the present Applicant or not. In the instant case it apparently shows that there was a quarrel going on between the present Petitioner and the deceased when the assault took place. In the given facts and circumstances of the case it can not be said that the Court below has committed an error of law while framing charges under Section 302 read with Section 34 of the I.P.C. against the present Applicant.

7. So far as the interference by the High Court invoking the provision under revisional jurisdiction is concerned, the law in this regard is well settled by the Hon'ble Supreme Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Anr** reported in (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 to be applied at that stage.

8. In the instant case, the Order passed by the Court below clearly reflects that prima facie the Court has found sufficient material for framing charges against the present Applicant.

9. Relying upon the judgement in case of **Amit Kapoor (Supra)** when prima facia a case is made out by the Prosecution, this Court should not interfere with the same at the stage of framing of charge. Consequently, the Criminal Revision is dismissed being devoid of merit.

Sd/-

(P. Sam Koshy)
JUDGE