

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 784 of 2016**

- M. A. Hussain S/o Late Shri M.T. Hussain, Aged About 65 Years Retired District- Manager, M.P. Agro, Ambikapur, District- Surguja, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Superintendent Of Police, (Special Police Establishment), Bilaspur, District Bilaspur, Chhattisgarh

-----Non-Applicant

For Applicant:

Shri Arvind Sinha, Advocate.

For Non-Applicant/State:

Shri U.K.S. Chandel, Panel Lawyer.

Single Bench: Hon'ble Shri P. Sam Koshy, J
Order On Board**26.8.2016**

1. The present Revision under Section 397/401 Cr.P.C has been preferred challenging the framing of charge against the present Applicant for the offence punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act').

2. Learned Counsel for the Applicant submits that it is a case where the original transaction had taken place somewhere in the year 1996-97 and the First Information Report was lodged in the year 1999. Subsequently, after the investigation, the prosecution had filed a closure report in the year 2003. However, the Trial Court had

refused to accept the closure report and had proceeded further with the complaint and went on to register a case.

3. According to learned Counsel for the Applicant, the entire documents enclosed with the charge sheet and the submissions recorded by the prosecution would go to show that there is no prima facie case made out against the present Applicant and therefore, the action on the part of the Court below in framing of charge against the Applicant is bad in law. He further submits that after the closure report was filed on 24.3.2003, no action was initiated against the Applicant and subsequently, the Non-Applicant/authorities granted a sanction to prosecute the Applicant vide its order dated 19.12.2013 on the basis of which, the Court below further proceeded to prosecute the Applicant and have accepted the charge sheet and also framed the charge against him for the offence punishable under Sections 13(1)(d) and 13(2) of the PC Act. He further submits that since there is no sufficient material and the closure report also states that there is no illegality committed by the present Applicant in the course of discharging of his duties thus, no case is made out and therefore, framing of charge against the Applicant is bad in law.

4. Per contra, learned State Counsel opposing the Revision submits that it was not mandatory on the part of the Magistrate to accept the closure report for the reason that in case the Court thinks that there was sufficient material against the accused persons, then it

has sufficient powers to refuse to accept the closure report and proceed further with the case. He further submits that there are clear allegations against the present Applicant in respect of the purchase of cycles to be distributed among the tribals in the place where he is posted and which has been purchased at a very exorbitant price i.e. much higher than the price of cycles in the retail market and also much higher than the price at which the same cycle have been purchased through Rajiv Gandhi Mission in the same district. He also submits that there are also allegations that the cycles that were purchased were of duplicate quality including its accessories which has further caused loss to the exchequer constituting an act of corruption on the part of the present Applicant and other accused persons and therefore, the Court below was justified in the framing of charge. He further submits that so far as the allegations made and its truth is concerned, the same is a subject matter which can only be decided after the evidence is recorded and the documents in respect of the pleadings are thrashed out in the course of the evidence and which cannot be scrutinized at this juncture and the Revision deserves to be rejected.

5. The Hon'ble Supreme Court, in (2012) 9 SCC 460 (Amit Kapoor vs. Ramesh Chander and Another) has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 Cr.P.C in

relation to quashing of an First Information Report 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 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.

6. The Supreme Court in (2014) 10 SCC 616 (**N. Soundaram Vs. P.K. Pounraj and Another**) 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 Cr.P.C 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 all 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 Cr.P.C. An investigation should not be shut out at the threshold if the allegations have some substance.”

7. In the instant case, if we look into the nature of allegations and the act allegedly committed by the Applicant and the other accused persons, it is clearly reflected that if not the charge to be established, at least, there is a strong suspicion made out from the allegations itself and the law in this regard is also very clear that even in case there are strong suspicions even then, the charge can be framed. This Court, further finds that the action on the part of the Court below in proceeding further in spite of the closure report having been submitted, was earlier challenged by the Applicant in another Petition under Section 482 Cr.P.C vide Cr.M.P No.621/2011. The said Cr.M.P came up for hearing on 19.3.2012 on which date, this Court passed the following order:-

“1. By this petition under Section 482 of the Cr.P.C, the petitioners have prayed for quashment of the order dated 5.5.2003 passed in Khatma Proceeding (Closer) No.4/2003 by the Special Judge under the Prevention of Corruption Act, Ambikapur, whereby on the basis of closer report relating to Crime No.88/99 registered at Special Police Establishment, Bhopal, Divisional Unit Bilaspur, the court below has issued process against the petitioner.

2. After arguing for some time, learned counsel for the petitioner seeks to withdraw this petition with liberty to file appropriate petition before the Court below.

3. The petition is dismissed as withdrawn with liberty aforesaid.”

From the record, it does not appear that the Applicant had subsequently taken any steps in the light of the dismissal of the Cr.M.P but have now filed another Cr.M.P before this Court again for exercise of revisional powers by this Court.

8. This act, in the opinion of this Court, is nothing but a misuse of the process of law as the Applicant has not approached the Trial Court after having taken the leave of the Court at the first instance seeking for discharge and now that the charge having been framed, he cannot turn around and again approach the High Court for the same relief of which he had earlier filed a Petition under Section 482 Cr.P.C.

9. For the foregoing reasons, the instant Revision is dismissed.

Sd/-
(P. Sam Koshy)
JUDGE