

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 863 OF 2015

Brijraj Das Vaishnav, S/o Shri Nanku Das Vaishnav, aged about 61 years, occupation Govt. Service, R/o House No.30, Sector-III, Geetanjali Nagar, P.S. Civil Lines, Raipur (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through P.S. Anti Corruption Bureau, Raipur (C.G.)

... Respondent

For Petitioner	:	Mr. Ajay K. Mishra, Senior Advocate, along with Mr. Ankit Singhal, Advocate.
For Respondent-State	:	Mr. B. Gopa Kumar, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 19/07/2016

Delivered on : 12/08/2016

1. The present revision petition under Section 482 CrPC has been filed assailing the order dated 20.8.2015 passed in Special Case No. 577 of 2015 by the Special Judge (Prevention of Corruption Act, 1988) and First Additional Sessions Judge, Raipur.
2. By impugned order dated 20.8.2015, the Court below has taking into consideration the records which have come in the charge-sheet framed charges against the Petitioner of having committed offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act').
3. Learned Senior Counsel for the Petitioner assailing the impugned order took the Court through the allegations which have been made against the Petitioner, on the basis of which, according to the Petitioner, the entire averments made in the charge-sheet as it is without adding or subtracting anything against the Petitioner for the offence punishable

under Section 7 as well as Section 13(1)(d) read with Section 13(2) of the Act is not made out at all. According to him, in fact there is no material whatsoever for the prosecution to substantiate the fact that from the materials that have been collected during the course of investigation, the Petitioner can be held to be guilty or can be convicted for the offence for which he has been charged with.

4. Learned Senior Counsel for the Petitioner further submits that in fact if we look into the merits of the case, the Complainant contractor himself did not have any money which was payable to him from the department on the date of alleged incident and in the absence of there being anything which was payable to the Complainant contractor there could not have been any demand made by the Petitioner. According to him, it is only a false case made out with a sole intention of torturing and harassing the Petitioner who had initiated disciplinary action/steps against the Complainant contractor. According to him, once when it is established that there was no reason or any ground for raising the demand particularly for the reason that there were no bills pending on the date of incident of the Complainant contractor neither was there any payment due of any previous work which he had done and in the absence of either of the two, the question of the demand from the Petitioner does not arise and this itself falsifies the case of the prosecution. According to learned Senior Counsel, the charge-sheet must disclose and the charge must be discernable on the face of it so as to prosecute the Petitioner and if from the materials available in the charge-sheet the offence is not discernable the Petitioner should not be forced to face prosecution particularly when from the available material itself it is hard to establish a case against the Petitioner of having committed the offence for which he has been charged.

5. Learned Senior Counsel for the Petitioner refers to the conversation that took place between the Complainant and the Petitioner which was recorded on a digital voice recorder provided by the Anti Corruption Bureau to the Complainant and submits that even if the entire conversation is taken into consideration even then there is not a single conversation whereby it could be said that the Petitioner had made a demand for money or the Petitioner to have promised to act in favour of the Complainant contractor and which was the basis for the complaint being lodged. If the basis itself is not established then the Petitioner should not be forced to face prosecution and undergo the trauma of trial in addition of being castigated as a corrupt officer and an accused for the offence under the Prevention of Corruption Act. According to the learned Senior Counsel, the ingredients required for making out a case under the Act itself is not available in the case diary inasmuch as there is no iota of evidence which even gives a suspicion on the part of the Petitioner of having made a demand and in the absence of a demand the case under the Act could not have been made out. Thus, prayed for quashment of the charges framed against the Petitioner. He further submits that even the alleged money recovered from the house of the Petitioner would show that it was not in the exclusive possession of the Petitioner and that the Complainant had left it in the porch of the house of the Petitioner unattended.

6. Learned Senior Counsel for the Petitioner in support of his contentions took the Court through various judicial pronouncements on the subject, i.e., **AIR 1972 SC 545** (Century Spinning and Manufacturing Co. Ltd. Vs. State of Maharashtra), **AIR 1979 SC 366** (Union of India Vs. Praful Kumar Samal), **AIR 1990 SC 1962** (Niranjan Singh Karan Singh Vs. Jitendra Bhimraj), **AIR 1996 SC 1744** (State of Maharashtra Vs. Somnath Thapa), **AIR 1997 SC 551** (C.K. Damodaran Nair Vs. Govt. of India), **AIR**

2010 SC 663 (P. Vijayan Vs. State of Kerala), **2009 (3) SCC 779** (C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala), **2009 (8) SCC 617** (State of Madhya Pradesh Vs. Sheetla Sahay & Others), **2014 (13) SCC 55** (B. Jayaraj Vs. State of Andhra Pradesh), **1985 (1) BomCR 669** (Motiram Jaisingh Pawar Vs. State of Maharashtra), **2003 (2) MPLJ 54** (Sitaram Vs. Sitaram S/o Shanker), **2003 (4) MPLJ 257** (Namita Agnihotri Vs. Dr. Rekha Barethia), **2006 (4) MPLJ 436** (R.P. Khare Vs. State of Madhya Pradesh).

7. Referring to paragraph 11 & 12 of the judgment in the case of **C.K. Damodaran Nair** (*supra*), the Senior Counsel stressed hard that for making out a case under the Prevention of Corruption Act there first has to be a demand for gratification and subsequently there also has to be an acceptance and obtaining of the gratification. In the present case all this was missing.

8. Learned Counsel for the State however opposing the petition submits that scope of interference at the stage of framing of charge by the High Court in exercise of powers under Section 482 CrPC is very limited. According to the State Counsel, here is a case where the Complainant Vineet Singh who was a contractor in the department where the Petitioner was working as Chief Engineer. According to the prosecution there was an amount of Rs.1.5 crores payable to the contractor for the work executed under the Rehar Anicut Diversion Scheme at Surajpur and for the release of which the Complainant had offered and the Petitioner had accepted an amount of Rs.5 Lacs as part payment. According to the State Counsel, the charge-sheet also reflects that when the Complainant had reported the matter to the Anti Corruption Bureau he was provided with a digital voice recorder and the said digital voice recorder which was subsequently got transcribed shows the details of the conversation including the payment of

cash of Rs.5 Lacs paid by the Complainant to the Petitioner at his residence. In addition, the State Counsel submitted that the cash which was given by the Complainant to the Petitioner was also seized from the residence of the Petitioner and that the hands of the Petitioner as well as his son when washed were found positive in the litmus test inasmuch as the water turned pink.

9. The State Counsel on the basis of these averments submits that for the purpose of framing of charge all that the Trial Court has to see is whether on the basis of the materials collected during the course of investigation a prima facie case is made out or not. He further went on to submit that even if there is a strong case of suspicion made out even then the Court is justified in framing of the charge. In the present case, the digital voice recorder containing a conversation between the Complainant and the Petitioner in addition the cash of Rs.5 Lacs arranged by the trap team also being recovered from the house of the Petitioner and the fact that the result of litmus test conducted on the Petitioner as well as on his son proving to be positive, a strong prima facie case appears to have been made out by the prosecution and thus prayed for rejection of the present revision petition.

10. Having considered the rival contentions put forth on behalf of either side and on perusal of the records and the averments made by the State Counsel goes to prima facie establish a case against the Petitioner. From the materials collected during the course of investigation and which is also part of the charge-sheet, it cannot be outrightly said to be a case of no evidence. For the three major facts i.e., (i) the digital voice recorder containing the conversation between the Petitioner and the Complainant; (ii) the recovery of a bag with Rs.5 Lacs given by the Complainant to the Petitioner as arranged by the trap team and (iii) the litmus test resulting

positive, this Court is of the opinion that the Trial Court has not committed any infirmity or illegality at the first instance while framing of charge. All the contentions and submissions put forth by the learned Senior Counsel for the Petitioner are all matters which could be established only after the recording of the evidence. In the opinion of this Court even if there is a slightest of suspicion made out from the available material in the charge-sheet, it cannot be said to be a case of no evidence, as whether the offence is made out or not, is a matter which could be established only after the evidence are recorded. At the time of framing of charge only a prima face case has to be seen.

11. So far as the judgments cited above by the learned Senior Counsel in respect of framing of charge is concerned, much water has since flown and the law is by now well settled. In the recent pronouncements on the issue of framing of charge, 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 a compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have 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 establish 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.

12. In **Amit Kapoor Vs. Ramesh Chander and Anr**, (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.

13. This view has further been reiterated by the Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora and others**, reported in (2013) 10 SCC 581, wherein it has been held :

“It is a settled legal 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 allegations have 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 allegations as made, prima facie establish 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.”

14. 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.”

15. 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 Court below while framing of charge against the Petitioner calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.

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

Sd/-
(P. Sam Koshy)
Judge