NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 187 OF 2016

Tirthraj Agrawal, S/o R.B. Agrawal, aged about 34 years, presently, posted as Joint Collector, Jagdalpur, District Bastar (C.G.), permanent R/o Tapkara, Jashpur, District Jashpur (C.G.)

… Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Law & Legislative Affairs, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station, Naya Raipur, District Raipur (C.G.)
2. State of Chhattisgarh, through the Secretary, Department of Home, Mahanadi, Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
3. Collector, Raigarh, District Raigarh (C.G.)
4. Sub-Divisional Officer (Revenue), Raigarh, District- Raigarh (C.G.)
5. Station House Officer, Police Station Pussore, District Raigarh (C.G.)

… Respondents

For Petitioner	:	Mr. Rajeev Shrivastava and Mr. Vinay Pandey, Advocates.
For Respondent-State	:	Mr. Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : **26/07/2016**
Delivered on : **12/08/2016**

1. The present petition under Section 482 CrPC has been filed challenging the order of the Government dated 29.6.2015 granting sanction for prosecuting the Petitioner for the alleged offence committed in the course of discharging of his official duties as is required under Section 197 CrPC.

The Petitioner further has also challenged the order of the Court below dated 12.8.2015 rejecting the application under Section 197 CrPC of the Petitioner challenging the filing of charge-sheet without obtaining proper sanction.

The Petitioner in addition also challenges the order of the Additional Sessions Judge (F.T.C.), Raigarh in Criminal Revision Case No. 74 of 2015 dated 6.11.2015 whereby the Revisional Court had rejected the revision preferred against the order dated 12.8.2015 rejecting the application under Section 197 CrPC.

Lastly, the Petitioner has also challenged the order dated 31.1.2016 whereby the Court below has framed charge against the Petitioner for allegedly committing offence under Sections, 420, 467, 468, 471/34 and Section 120-B IPC.

2. The facts relevant for the adjudication of the present dispute is that the Petitioner at the relevant point of time was posted as Sub Divisional Magistrate at Raigarh. He was also in the capacity of being the Sub Divisional Magistrate appointed as the Land Acquisition Officer for certain land which was acquired for the establishment of power plant at Village Lara. On 1.7.2014 an FIR was lodged whereby it was alleged that in the course of acquisition of land and in releasing the compensation payable for the said acquisition of land there were certain irregularities committed inasmuch as persons who were not eligible for compensation have been fraudulently granted compensation on the basis of false, fraudulent and fake transactions. It is said that the Petitioner in the capacity of Sub Divisional Magistrate was in-charge of releasing the compensation and under his signatures the payment was released to these fake persons based on fraudulent documents. It is also alleged that the payment of compensation was made in violation to the said prescribed norms and also by ignoring the procedure of identification of the claimants for payment of compensation inasmuch as photographs also were not insisted upon as a proof of identification while releasing the payment.

3. Based upon the said FIR, the police authorities finally vide its report dated 3.12.2014 submitted the charge-sheet before the Court of the Judicial Magistrate First Class, Raigarh who in turn registered a case against the Petitioner and other accused persons vide Criminal Case No. 1128 of 2014. Subsequently, the Government on 29.6.2015 had also granted sanction for prosecution of the Petitioner. Thereafter, the Petitioner before the charge was framed moved an application before the Court below that the registration of the complaint by the Judicial Magistrate First Class was bad in law for the reason that whatever action which the Petitioner had carried out was in the capacity of a Sub Divisional Magistrate/Land Acquisition Officer and therefore for all practical purposes prior sanction ought to have been taken by the Respondents before initiating the prosecution against the Petitioner. According to the Petitioner, since prior sanction at the relevant point of time was not obtained the registration of the complaint and taking cognizance of offence was bad in law. The Trial Court at the first instance on 12.8.2015 rejected the said application holding that the nature of the allegation made in the FIR would clearly depict that the actions alleged against the Petitioner were not what he has done in the discharge of the duties of a Sub-Divisional Magistrate.

4. According to the Trial Court the act on the part of the accused persons including the Petitioner squarely would fall within the definition of cheating under Section 420 IPC and forgery under Section 466 and 470 IPC and therefore for the said offences sanction was not required.

5. The said order dated 12.8.2015 was subsequently put to challenge in a revision petition which was registered as Criminal Revision No. 74 of 2015 and the Revisional Court also vide one of the impugned orders dated

6.11.2015 rejected the revision holding that since the nature of offence levelled against the Petitioner was that of cheating, forgery and also the Petitioner being part of a conspiracy the non-obtaining of sanction under Section 197 CrPC was inconsequential. In due course of time the Trial Court on 13.1.2016 also framed charges against the Petitioner for the offences punishable under Sections 420, 467, 467, 471/34 and 120-B IPC.

6. The present petition thus has been preferred challenging firstly granting of sanction; secondly, registration of complaint and taking of cognizance; thirdly, the rejection of the application filed by the Petitioner on 12.8.2015 and then the order of the Revisional Court rejecting the revision preferred against the order dated 12.8.2015 and finally framing of charges.

7. Counsel for the Petitioner assailing the action on the part of the Government in granting sanction for prosecution subsequent to the charge-sheet being filed submitted that the Government could not have granted sanction subsequent to the charge-sheet being filed and the entire case of the prosecution collapses only on the said deficiency.

8. Counsel for the Petitioner referring to Section 197 CrPC submitted that the requirement of law itself is that proper sanction ought to have been taken prior to the cognizance being taken by the appropriate Court. Counsel for the Petitioner relied upon the recent decision of the Supreme Court in **2016 (2) SCC 143** (N.K. Ganguly Vs. Central Bureau of Investigation, New Delhi), to strengthen his submission that the act on the part of the Respondents in granting sanction subsequent to the cognizance having been taken by the Court to be bad in law. Further submission of the Counsel for the Petitioner was that perusal of the entire charge-sheet without adding or subtracting anything from the face of it would not show any role played by the Petitioner in commission of the said offences.

According to the Petitioner, admittedly the Petitioner was at the relevant point of time posted at relevant place as Sub-Divisional Magistrate/Land Acquisition Officer and that he has in the course of discharge of his duties passed orders in various cases under the proceedings initiated including the releasing of the payment to the land oustees.

9. In addition, Counsel for the Petitioner also submits that in the charge-sheet it has been said that the payment have been released to wrong persons who were not entitled on the basis of fake documents and identification. According to the Petitioner, the payments have been made through bank and that in the entire case none of the officials of the bank have been made accused. Counsel for the Petitioner further referring to the documents submitted that the perusal of the charge-sheet itself would reveal that there has been no role played by the Petitioner in the fraudulent transaction. According to him, all these transactions have in fact taken place at the lower level of which the Petitioner was not aware at all.

10. Further contention of the Counsel for the Petitioner is that the over all facts and circumstances of the case would show that the Petitioner may have shown negligence in the performing of his duties and which may amount to dereliction of duty but dereliction of duty would not amount to a criminal offence and for this reason also the proceedings need to be set aside.

11. Per contra, learned Counsel for the State opposing the petition submits that taking into consideration the nature of the allegations levelled against the Petitioner and the other accused persons and also taking note of the fact that the offences which have been registered against the Petitioner are all offices under the provisions of India Penal Code, requirement of sanction under Section 197 CrPC is not very crucial. He further submits that so far as the role played by the Petitioner in the commission of the offence is concerned, it is the Land Acquisition Officer who is the ultimate authority right from the date of the first notification of land acquisition till the final payment of compensation for the land acquired is made.

12. According to the State Counsel, in the instant case the role of the Petitioner is that the Petitioner and the other accused persons brought fake persons for claiming compensation and based upon fabricated and fraudulent documents have processed their case and finally released the payment to these persons. Similarly, the State Counsel also pointed out the statements which have been recorded in the course of investigation which reveal that the Petitioner had released the payment even without verifying the proper identification of the persons. He further submitted that illegality, fraud and cheating is writ large for the reason that the accused persons including the Petitioner have deviated from the set prescribed practice and procedure of releasing the payment inasmuch as even the identification of the persons who were illegally being benefited were not taken.

13. The State Counsel refers to the documents in the charge-sheet wherein it shows that though different persons were projected for the release of payments but the compensation in fact has been released to only one persons who has received the payment for all the other fake claimants and the register in which the signatures are obtained of the persons who received the payments is duly signed by the Petitioner in the capacity of the Land Acquisition Officer, that is to say that these payments were released in the presence of the Petitioner who has countersigned the release of the payments being made to one person.

14. Learned Counsel for the State further submits that from the perusal of the case diary and the statements recorded of the witnesses in the course of investigation would also show that there was an sheer negligence on the part of the Petitioner shown while distribution of the compensation as proper notice was not issued to the NTPC for whom the land was acquired during the disbursement proceedings. He further submits that all payments had to be made after obtaining photographs of the claimants duly affixed in the register but in the instant case the payments have been released without insisting of the photographs of the persons to whom the payments have been released.

15. According to the State Counsel there were around seven persons who have been granted the benefit on the basis of fake and fraudulent documents and payments also had been released to them. Thus, the State Counsel submits that firstly, since the offence was registered under the provisions of the Indian Penal Code, the requirement of sanction at the relevant point of time was not necessary and subsequently the sanction also now been obtained and as such the deficiency if any also stands cured. He further submits that the documents attached to the charge-sheet gives sufficient indication of the role played by the Petitioner in the commission of the offence of releasing huge amount of compensation under the land acquisition proceedings to seven persons to whom the payments have been made contrary to the practice and procedure for the purpose of releasing of the said payments. Thus, prayed for the dismissal of the petition.

16. Having heard the rival contentions put forth by the counsel appearing on either side it would be trite to refer to the decisions of the Supreme Court in respect of the principles laid down to be considered in a petition wherein the challenge is framing of charge.

17. The Supreme Court in Amit Kapoor Vs. Ramesh Chander and Another reported in (2012) 9 SCC 460 has clearly laid down the principle that inherent as well as revision 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.

18. 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:

> 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 allegation 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 tis power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance."

Again in the case of Vinod Raghuvanshi Vs. Ajay Arora and Others reported in (2013) 10 SCC 581 the Supreme Court has 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."

19. Keeping in view the recent decisions of the Supreme Court if we look into the nature of allegations levelled against the petitioner it would reflect that the petitioner in the present case at the relevant point of time was working as a Sub Divisional Magistrate at Raigarh and he in the capacity of being the SDM was also the Land Acquisition Officer where the land was acquired by the State Government. It is not in dispute that the SDM in the capacity of Land Acquisition Officer was the authority who was finally releasing the payments to the persons whose land had been acquired by the State Govt. Under the said process, it is also not in dispute in the instant case that the payments of certain number of persons had been made at the instance of the SDM/petitioner. Later on, on a complaint when it was inquired, it was found that some of the persons to whom the payments have been released were fake persons and they have been made the payments on the basis of fake, fabricated and fraudulent transactions and documents. Even the allegation is that the payments so released to these fraudulent persons were by giving go-by to the normal prescribed norms and practice to be mandatorily followed at the time of release of payments. The petitioner does not dispute the fact that the payments have been made with his signatures on the cheques. These fake persons were released the payments without being insisted for their photographs on their payment slips so as to keep it as a proof of identity of the persons to whom the payments have been released. These are some of the prima facie allegations which had been brought by the prosecution before the Court below at the time of registration of the complaint and if those allegations are believed, it is certainly a serious matter and cannot be simply brushed aside.

20. Further, keeping in mind these undisputed facts as stated in the preceding paragraph it cannot be said to be a case of no evidence whatsoever. At the stage of framing of charge, it is settled position of law that the High Court would not conduct a roving enquiry to reach to a conclusion whether from the charge sheet, the petitioner can be convicted or not, neither would the Court go through the documents in the charge sheet threadbare to analyze whether the accused persons can be held guilty or not. At the stage of framing of charge all that has to be considered by the Magistrate or the concerned Court is that from the documents that are available with the case diary prima facie a case is made out or not. The Supreme Court has gone to the extent of laying down the principle that even if there is a strong suspicion even then framing of charge cannot be found fault with.

21. Coming to the present case, admittedly, many fake and fraudulent transactions were detected in the course of investigation and prima facie, it appears that the practice and procedure normally applied at the time of release of payment was not followed and with the payments being released under the signatures of the petitioner in the capacity of Land Acquisition Officer/SDM. Now, whether the petitioner is in fact involved in the larger conspiracy of cheating or fraud is a matter which can only be thrashed out after the evidence of the prosecution as well as the defence is recorded. Thus, this court is of the opinion that no strong case has been made out by the petitioner for interfering with the order of the JMFC dated 13.01.2016 whereby the charge has been framed against the petitioner.

22. So far as the second issue as to the order of the JMFC dated 12.08.2015 rejecting the application under Section 197 CrPC is concerned, counsel for the petitioner has referred to the judgment of N. K. Ganguly (Supra) wherein paragraph-35 the Supreme Court has held as under:-

> "......In the instant case, since the allegations made against the petitioner in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty therefore it was essential for the learned special judge to correctly decide as to whether the previous sanction from the Govt. under section 197 CrPC was required to be taken by the respondent before taking cognizance."

23. A perusal of the said judgment of the Supreme Court would reveal that the charge framed against N. K. Ganguli was that of Section 13 (1) (d) and 13 (2) of Prevention of Corruption Act, 1988 whereas in the instant case, the offence registered against the petitioner and the other accused persons is that of under Sections 420/34, 467/34, 468/34, 471/34 and Section 120B of IPC. In the instant case, the petitioner has not been prosecuted under the provisions of the Prevention of Corruption Act rather the allegation against the petitioner and the other accused persons is that of committing an offence of cheating and playing fraud with the Govt. causing monetary loss to the State Exchequer.

24. The offences which have been charged against the petitioner are under the provisions of Indian Penal Code and the Supreme Court in more than a couple of decisions has held that an act of cheating and fraud can never be brought within the ambit of discharging of official duty. Once when the allegation is that of cheating and fraud, the same cannot be termed to have been committed in the course of discharge of official duties. Since the act of cheating and committing fraud does not fall within the category of an act in the course of discharge of official duty, at the first instance, the requirement of sanction under Section 197 CrPC itself would not be required.

25. In this regard the Supreme Court recently in the case of Rajib Ranjan and Others v. R. Vijaykumar reported in (2015) 1 SCC 513 in paragraphs-16 & 18 has held as under:

> "16. ….To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, nor bar.
>
> 18. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted."

Again in the case of Inspector of Police and another v. Battenapatla Venkata Ratnam and another reported in 2015 AIR SCW 3284 the Supreme Court in paragraph-11 has held:

> "11.The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only."

26. In the light of above referred two judgments of the Hon'ble Supreme Court, the case of N. K. Ganguly (Supra) heavily relied upon by the counsel for the petitioner therefore is distinguishable and shall not be applicable in the instant case on account of the fact that the charge against the accused therein was for an offence under the provisions of the Prevention of Corruption Act.

27. This Court in one of its recent decisions passed in Cr.M.P. No.783/2016 dated 29.07.2016 in the case of S. N. Ram v. State of CG relying upon the above two referred decisions of the Supreme Court has already held that in a case of cheating and fraud, previous sanction under

Section 197 CrPC would not be necessary. In case of requirement of sanction under Section 197 CrPC two conditions are sine-quo-non (1) that the public servant is only removable from the office by the State Govt or with the sanction of the State Govt and (2) that he has committed the alleged act in discharging or purporting to discharge of his official duty.

28. The Act of criminal misappropriation of money is not an official act but occupying the office only facilitated the commission of crime of such nature. The criminal misappropriation of money or property is not a public duty therefore, no sanction for the prosecution of the offence punishable under Sections 420/34, 467/34, 468/34, 471/34 and Section 120B of IPC is necessary likewise tampering or interpolation or cheating does not fall within the ambit of public duty or official duty therefore no sanction is necessary for the offence punishable for an act of cheating or fraud.

29. In the instant case, according to material collected on behalf of the prosecution, the petitioner along with co-accused persons were required to discharge the entrustment of duty in accordance with the procedure prescribed but in stead of complying the procedure the petitioner along with other co-accused persons have forged the documents and used the same as genuine and disbursed the money. The offence of forgery and cheating and criminal misappropriation is not a public duty therefore no such sanction is necessary under Section 197 of CrPC. Thus, the Court below has rightly framed charges and has taken cognizance without any sanction under Section 197 CrPC.

30. In the instant case, as a matter of fact, subsequently the Govt. has also granted sanction for prosecuting the petitioner. Thus, firstly the sanction is not required in a case of cheating and fraud and secondly, even if it is assumed that whatever act the petitioner has done in the course of discharge of his official duties, the Govt. though at a later stage but has granted sanction and as such, even if there was a requirement, the same stands fulfilled.

31. Now the effect of a subsequent sanction being obtained and the effect and prejudice caused to the petitioner viz-a-viz, the requirement of previous sanction under Section 197 CrPC is a matter which would be considered by the Court below after the evidence on either side is recorded. Therefore, this Court is of the opinion that only because in the given facts and circumstances of the case where the charge itself against the petitioner is an act of cheating and fraud, granting of sanction subsequent to the charge sheet being filed would not be so fatal to vitiate the entire proceedings drawn by the JMFC nor will the framing of charge get vitiated.

32. For the foregoing reasons, the present petition being devoid of merit deserves to be and is accordingly rejected.

Bhola

Sd/-
(P. Sam Koshy)
Judge