

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 296 of 2016

(Reserved on 25.07.2016)

- D.V.C.S. Varma S/o D. Bangar Raju Aged About 45 Years R/o Vizag, (Andhra Pradesh).

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, P.S. - Kuakonda, Distt. South Bastar, Dantewada Chhattisgarh.

---- Non-applicant

and

Criminal Revision No. 264 of 2016

(Reserved on 02.08.2016)

- B.K.Lala S/o Late Bilayati Ram Agarwal Aged About 54 Years R/o Main Market, Kirandul P.S. Kirandul, District Dantewada, South Bastar Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through P.S. Kuankonda, District Dantewada Chhattisgarh.

---- Non-applicant

and

Criminal Revision No. 228 of 2016

(Reserved on 26.07.2016)

1. Soni Sori W/o Late Anil Putane Aged About 43 Years R/o Village Sameli, P.S. Kuakonda, District South Bastar, Dantewada, Chhattisgarh.
2. Lingaram Kodopi S/o Joga Aged About 34 Years R/o Village Sameli, P.S. Kuakonda, District South Bastar Dantewada Chhattisgarh.

---- Applicants

Versus

- State Of Chhattisgarh Through Police Station Kuakonda, District South Bastar, Dantewada, Chhattisgarh.

---- Non-applicant

For Applicants	:Mr. K. Raghavacharyulu, Mr. Kailash pandey, Mr. Vaibhav Shukla, Mr. Rahul Tyagi, Ms. Shalini Gera and Mr. Pragalbha Sharma, Advocates.
For Non-applicant-State	: Mr. B. Gopa Kumar, Dy. Advocate General, Mr. Neeraj Jain and Mr. O.P. Sahu, Govt. Advocates.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Delivered on 02/09/2016

1. These three Criminal Revisions have been filed against the common order dated 22.12.2016 whereby charges have been framed against the Petitioners who are accused in the same crime for the offence punishable under Sections 120B, 121, 124A of I.P.C. as also under Section 17 & 40 of Unlawful Activities Prevention Act, 1967 and Section 8(1) of Chhattisgarh Special Public Security Act, 2005 and the consequential proceedings there to. In addition, the Applicants have also challenged rejection of the Application for discharge.
2. Since all these three Criminal Revisions have arisen out of the same criminal proceeding and a common charge sheet, though these cases have been on account of paucity of time heard on different dates but for the sake of convenience and to avoid repetition of facts, this Court feels it proper to pass a common judgment deciding these three cases.
3. The prosecution case in brief is that on 08.09.11 a secret

information was received at police station, Kuakonda district Dantewada informing about an illegal transaction which was likely to take place between the Applicants - accused persons in the present three Revision Petitions with the Naxalities operating in the District Dantewada. Based upon the said secret information appropriate entries were made in the Rojnamcha Sanha. Subsequently, on 09.09.2011 after making entries in the Register maintained in the Police Station, a team of Police personnel reached the market and were awaiting the meeting between the accused Applicants and the Naxalites. They found Bolero jeep has come, one of the Applicant B.K. Lala has reached the market. The said B.K. Lala is said to be the contractor of E.S.S.A.R. group of companies operating in the district Dantewada. It is said that said B.K. Lala reached the market place, at that moment of time two persons namely Soni Sori and Lingaram Kodopi came near the Bolero Jeep which was being driven by B.K. Lala and it is said that as per the discussions earlier held said B.K. Lala the Applicant – accused is said to have taken out a bag containing Rs. 15 Lakhs and was about to be given to Lingaram Kodopi when the Police authorities reached the spot and arrested Lingaram Kodopi and accused B.K. Lala along with Cash of Rs. 15 Lakh which B.K. Lala was trying to handover to Lingaram Kodopi.

4. It is alleged that the said Lingaram Kodopi and accused Soni Sori who had gone to B.K. Lala were acting at the instance of naxalities who are members of the Communist Party of India

Marxist. While the Police personnel were in the process of the arresting B.K. Lala and Lingaram Kodopi, co-accused Soni Sori is said to have managed to escape and fled away from the spot and she was arrested later from Delhi. The Police authorities in addition to the cash of Rs. 15 Lakh seized from the spot has also seized Bolero Vehicle on which the accused B.K. Lala came along with the cash, had also seized the two mobile phones belonging to B.K. Lala.

5. Accordingly, Dehati Nalisi was registered at Police Station Kuakonda and subsequently an F.I.R. was registered at the same Police Station by one Umesh Kumar Sahu, Sub-inspector of the Police Station Kuakonda. Subsequently, an investigation was conducted and the present persons have all been arrested and the charge sheet in this regard was filed on 4.3.2012 and later on vide order dated 22.12.2015 charges also was framed against the Applicant accused persons for the offence punishable under Sections 120B, 121, 124A of I.P.C. as also under Section 17 & 40 of Unlawful Activities Prevention Act, 1967 and Section 8(1) of Chhattisgarh Special Public Security Act, 2005. This registration of the case and subsequent proceeding against the Applicants for the criminal offences stated above and also framing of charge and rejection of application for discharge are put to challenge before this Court in these three Petitions.
6. So far as the Applicant in Criminal Revision No. 296/16 is concerned the learned Counsel for the Applicants at the outset itself submitted that according to him the entire action on the part

of the prosecution smacks malafides. From the entire perusal of the Case Diary no stretch of imagination does spell out any action to be initiated against the Applicant. He further submitted that the entire allegation on the Applicant D.V.C.S. Varma was based upon the so called statements recorded during the course of investigation of the accused persons which otherwise is not admissible and only on the basis of the statement recorded in the course of investigation of the accused persons can not be taken as a piece of evidence against him and the Applicant can not be held guilty of having committed the offence nor can he be convicted with the said limited piece of statements. According to the Applicants the framing of charges and subsequent proceedings initiated are totally uncalled for and it needs to be heard and decided at the earliest for the reasons that it affects the right and liberty of the person before the Applicants undergoes the entire trauma of trial. According to the Applicant there was total non application of mind on part of the presiding judge while hearing the case at the stage of framing of charge. Learned Counsel for the Applicants submits that it is the case where no case itself is made out from the documents and statements collected in the course of investigation.

7. So far as the Applicant D.V.C.S. Varma is concerned it is submitted that he was not directly or indirectly involved in the alleged transaction of Rs. 15 lakhs being made by the accused persons. It is also alleged that except for the statement of the accused persons and that to which are vague statement made

by the accused in the course of investigation, there is no iota of evidence by which it can be conclusively proved. The Court has thus not applied its mind at the time of framing of charge. It was also alleged that the allegation affixed against the Applicant is that of having made some telephonic conversation with one of the Accused person i.e. with B.K. Lala. It was contended that even there was no substantial evidence from the telephonic conversation allegedly made by the accused D.V.C.S. Varma. It was also contended that a perusal of the charge sheet and other documents, even if it is taken up in its face value the ingredients necessary for bringing home the charges framed is not available and for this reason also the Petition deserves to be allowed. It was also contended by the Applicant that the charge sheet lacks any personal overt act being disclosed so as to bring home the acts for which they have been charged.

8. According to the Applicant a plain acceptance of the contents available in the case diary itself would reveal that alleged act against the present Applicant of providing some money to the alleged banned organization can not under any circumstance be brought within the definition of Sedition. Learned Counsel for the Applicant submits that it is here that the Court below should have applied its mind judiciously and should have perused the provisions of law and should have also considered facts whether the alleged offence is made out against the Applicant or not before finalizing the charge. The Court below having failed to do so, have framed the charge in a mechanical manner.

9. The Applicant in the instant case relied upon the decisions of Supreme Court in case of **Depot Manager, A.P. State Road Transport Corporation Vs Mohd. Yousuf Miya and Others**¹, **G.N. Verma Vs. State of Jharkhand and Another**² and **Sunil Bharti Mittal Vs. Central Bureau of Investigation**³.
10. It was lastly contended by the Counsel for the Applicant that the Applicant in the instant case was working as a General Manager at the beneficiation plant and slurry plant as such he does not have any substantive say in administration of the management and for which there is an entirely different department and therefore the Applicant would not have been the person who would ask the accused B.K. Lala to arrange for the payment to be made to the banned organization and the prosecution case in this regard therefore is highly doubtful and hard to believe and the Applicant deserves to be given benefit in respect of the same.
11. So far as the Applicants in Criminal Revision 228/2016 namely Soni Sori and Lingaram Kodopi are concerned, Ms. Salini Gera appearing for the Applicants contended that taking into consideration the contents of the charge sheet there is no prima facie case made out against the Applicants so as to bring home offence under Sections 121, 124 (A) and 120(B) of the IPC and Sections 17 and 40 of the Unlawful Activities Prevention Act, 1967 and Section 8(1) of the Chhattisgarh Special Public Security Act, 2005. Similarly, there is no recovery or seizure

¹(1997) 2 SCC 699

²(2014) 4 SCC 282

³(2015) 4 SCC 609

made from the possession of the present Applicants by which also it can be said that the Applicants had played active role in the alleged commission of the offence. According to the Applicants it is also a case where in-fact no transaction actually had taken place and in the absence of complete transaction it would be difficult for the prosecution to establish the case that has been made against them. Further it was also contended that there is also no evidence of their presence at the place of incident. It was also contended by the Applicants that so far as the implication of the Applicant No. 1 Soni Sori is concerned there is no reference of her presence at the spot and there is no evidence to show that the Soni Sori had fled from the place of the incident. As would be clear that so far as said Soni Sori having fled is the fact which is reflected in the charge sheet after a period of about two months from the date of incident and therefore the entire elements made against the Soni Sori at least stands highly doubtful and disputed. Similarly, it was the contention of the Counsel for the Applicants that story of the prosecution also is hard to believe for the reason that the prosecution has not given any details of secret informer on the basis of which police authorities have acted upon. So far as the above record of the Applicants is concerned she has not been convicted in any criminal case till now in which she has been implicated which itself shows that the prosecution has been somehow trying to implicate the Applicant in one case or the other though there is no evidence. According to the Counsel for

the Applicants so far as the offence under Sections 120B and 124A are concerned there should be a specific meeting of minds among the accused persons established so as to bring home the said offences and further the other allegations against the Applicants also do not meet the necessary ingredients which is otherwise required for making out a case under Section 124A. So far the offence under Sections 17 and 40 of the Unlawful Activities Prevention Act is concerned the said charge could not have been framed with the available materials for the reasons that firstly no funds have been transferred and secondly there was no object as well as intention on part of the present Applicants in accepting any sort of funds. In addition, there is also no link established between the present Applicants and the alleged banned organization neither has prosecution been able to collect any sort of information in the course of its investigation by which it could be established as to how the funds which was allegedly being transferred by B.K. Lala and to be utilized. The Counsel for the Applicants also submits that the entire case against the present Applicants revolve on statements made by the accused persons and the admissibility of the statement of an accused person so as to implicate the third party should not have been accepted by the trial Court for the purpose of framing of the charge as the statements so made by the accused person would not be admissible under the provisions of the Evidence Act and for these reasons also thus the Applicants prayed for the quashment of the framing of charge as also prayed for discharge

of the Applicants from the offences that have been levelled against them.

12. In support of her contention the Counsel for the Applicants relied upon the decisions of the Supreme Court in case of **Kedar Nath Singh & Others Vs. State of Bihar and Others**⁴, **Dilawar Babu Kurane Vs. State of Maharashtra**⁵ and **John Pandian Vs. State Rep. By Inspector of Police, T. Nadu**⁶ and also a decision of the High Court of Kerala in case of **Ramesan Vs State of Kerala**⁷.

13. So far as Criminal Revision No. 264 /2016 in the case of B.K. Lala is concerned Counsel for the Applicant challenged the action on part of the Court below in framing of the charge under Sections 121, 124 (A) and 120(B) of the IPC and Sections 17 and 40 of the Unlawful Activities Prevention Act, 1967 and Section 8(1) of the Chhattisgarh Special Public Security Act, 2005. On the ground that a plain reading of the charge sheet itself would reveal that there is no ingredient available in the case diary so as to prima facie make out a case against the Applicant for the offence under Sections 121, 124A and 120B of the I.P.C. Like wise ingredients necessary for the purpose of establishing an offence under Section 17 of the Unlawful Activities Act also is missing from the contents of the case diary and in the absence of the sufficient material Court below should not have framed the said charges against the present Applicant.

It was also contended by the Counsel for the Applicant that the

4 AIR 1962 SC 955

5 AIR 2002 SC 564 : (2002) 2 SCC 135

6 (2010) 14 SCC 129

7 2006 LawSuit (KER) 633

Court below erred in as much as in considering the fact whether there was sufficient piece of evidence which has admissible value under the provisions of the Evidence Act so as to bring home the offences for which he has been charged. According to the Applicant all the charges leveled are all vague and without any substance. The Counsel for the Applicant further submitted that a plain reading of the framing of charge itself would reflect that firstly there is a total non-speaking order on the part of the Court below in as much as it has not disclosed what the prima facie material which the Court below found against the Applicant for framing each of the offence. Secondly, it was contended that even otherwise the reading of the order of framing of charge would also reflect that the order of framing of charge has been made in a mechanical manner without proper application of mind and lastly it was contended that the Court below did not care to consider the submissions which have been made by the Applicant at the time of the framing of charge. It was further contended that Court below has totally relied upon the contents of the charge sheet for the purpose of framing of charge whereas the charge sheet is by itself not a substantive piece of evidence. It is only an information formed by the investigating agency and it has been accepted by the Court below in toto where as the Court below ought to have applied its judicious mind at the time of framing of charge and should have considered the fact as to what were the admissible piece of evidence and only admissible evidence should have been relied

upon for the purpose of framing of charge. In addition, Counsel for the Applicant also tried to cast a doubt on the prosecution case on account of the information available and the details of the secret informer and also tried to question the case of the prosecution on the ground that the investigating agency has failed to call secret informer for recording his statement which further gives rise to a great element of doubt. The Counsel for the Applicant further in the course of making submission also stated that the charge sheet also does not disclose details of the persons Raghu and Vinod the alleged members of the banned organization and in absence of any evidence against the alleged banned organization and also for the reason no arrest having been made of any of the members of the so called banned organization, no case could have been made out against the Applicant. Again in the absence of any direct evidence so far as the presence of Raghu and Vinod in the locality, the same would also become inadmissible and benefit of which ought to have been granted to the Applicant accused. The Counsel for the Applicant B.K. Lala also alleged that the charge sheet miserably fails to provide basic ingredients necessary for the framing of charge which have been leveled against the Applicant in as much as the charge in respect of waging of war does not show ingredients how the Applicant has tried to wage a war against the State. Likewise, it was also argued that there has been no transfer of arms, nor any sort of recovery of any ammunition from the Applicants which would have been a vital factor that has not

been considered by the Court below before framing of charge under Section 121 of I.P.C. The case of the Applicant further is that even there is no *mens rea*, motive or intention established on the part of the Applicant for making out a case of sedition against him. In addition, according to the Applicant the Court below also ought to have taken note of only the admissible materials at the time of framing of charge. As regards the charges under Sections 17 and 40 of the Unlawful Activities Prevention Act it was also contended that the prosecution firstly has failed to establish from the charge sheet as to how do they say that the money was intended to be given to a banned organization. There is no evidence with regard to the banned organization nor any material by which it can be reflected that the organization stood declared as a banned organization is available in the case diary and in the absence of which the charges under Section 17 and 40 of the Unlawful Activities Prevention Act could not have been leveled against the Applicant. The Counsel for the Applicant also submits that there was no details about the persons Raghu and Vinod and further that the investigating agency has also not been able to establish as to who these Raghu and Vinod are.

14. In support of his contention the Counsel for the Applicant relied upon the decisions of the Supreme Court in case of **Depot Manager (supra), Suresh Budharmal Kalani Vs. State of Maharashtra⁸ Central Bureau of Investigation Vs. V.C.**

⁸ (1998) 7 SCC 337

Shukla & Others⁹, Bilal Ahmed Kaloo Vs. State of A.P.¹⁰, Radhey Shyam Khemka & Another Vs. State of Bihar¹¹, Keshub Mahindra Vs. State of M.P.¹², and R.K. Krishna Kumar Vs. State of Assam and Others¹³ and also a decision of High Court of Kerla in the case of **Ramesan (supra)**.

15. In Criminal Revision No. 296/2016, replying to the submissions made by the Applicant and also opposing the Petition Shri B. Gopa Kumar, Deputy Advocate General submitted that so far as this Applicant is concerned he is one of the accused persons in a larger conspiracy of the entire offence. According to the State Counsel it was the present Applicant who had asked the co-accused B.K. Lala to arrange for fund of Rs. 15 Lakhs to Naxalies operating in that area. The said amount was only a part payment which was allegedly to have been mutually agreed upon between the parties.

16. So far as involvement of the Applicant DVCS Varma is concerned the State Counsel refers to the statement recorded under Section 164 of the Cr.P.C. of Jagmandar who was an employee of the co-accused B.K. Lala. In addition to the statement of the said witness and the statement of B.K. Lala though an accused reveals that there is meeting of the minds of the present applicant DVCS Varma, co-accused B.K. Lala and other persons particularly the members of the Naxalite group. Accused B.K. Lala in his statement under Section 161 of the

9 AIR 1998 SC 1406

10 (1997) 7 SCC 431

11 (1993) 3 SCC 54

12 (1996) 6 SCC 129

13 (1998) 1 SCC 474

Cr.P.C. has also made the same statement in respect of the involvement of the present Applicant as has been narrated by Jagmandar. The State Counsel relying on the statement of these witnesses submits that it is not the case where there is no evidence whatsoever against the Applicant. That in case even if there is some evidence found during investigation which in this Case prima facie the statements of Jagmandar as well as B.K.Lala it can not be said that the Court below has committed an illegality or was wrong while framing of the said charges. According to the State Counsel it is not obligatory on the part of the judge to consider minute details and weigh any substantive balance whether the facts if proved, would be compatible with the innocence of the accused or not. At the stage of framing of charge the Court is not to see whether there is sufficient ground for conviction of the accused or whether trial is sure to end in his conviction. Even a strong suspicion at the initial stage is sufficient for framing of charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused. The State Counsel however submits that as per the scope of Section 227 of the Cr.P.C. it is only the submissions of the accused on record of the case as has been filed by the prosecution and documents submitted therewith and nothing more. According to the State Counsel hearing the submissions of the accused can not mean opportunity to file material be granted to the accused at the stage of framing of charge. Hearing of the submissions of the accused has to be confined to the materials

produced by the Police alone. The State Counsel further submits that from the case diary it is also reflected that in the diary which was seized from B.K. Lala there too, at many places name of the present Applicant is reflected.

17. So far as the Criminal Revision No. 228/2016 is concerned according to the State Counsel so far as involvement of the present applicants Soni Sori and Lingaram Kodopi are concerned their names are reflected in the case diary right from the first day when the Rojnamcha was prepared on the basis of a secret information received i.e. on 08.09.2011 wherein the secret information was passed to the Police authorities about the money to be provided to the Naxalites and which was being arranged by B.K. Lala and the same was to be transferred through the present Applicants.

18. The State Counsel further submits that so far as the Applicants in the instant case is concerned Applicant No. 2 Lingaram Kodopi was the person who was caught red handed along with the co-accused B.K. Lala in the course of cash of 15 lakh being transferred by B.K. Lala to Lingaram Kodopi which was later on to be given to the Naxalites and the said Soni Sori was said to be in company of Lingaram Kodopi. It is also alleged by the State Counsel that there is also evidences in the case diary to show that there were frequent conversations being made between one of the Applicants Soni Sori with the co-accused DVCS Varma and the Applicant Lingaram Kodopi. In addition, there is these memorandum statements of B.K. Lala and Lingaram Kodopi,

both have very categorically stated the involvement of the Applicants in the entire transaction of receiving payments and said amount being transferred to the Naxalites through the present Applicants. There are also statements of the trap team which reflect that the Applicant Soni Sori was also present at the place of incident. Thus, for all these, the State Counsel submits that it is the case where prima facie material is available against the Applicants in the instant case in the case diary. On the basis of which the Court below has framed charges and it can not be faulted at. According to the State Counsel at the time of framing of charge all that the Court below is to see is whether without any further addition or subtraction there is prima facie material available against the Applicants accused in connection with the commission of the offence, which in the instant case prosecution has been able to produce before the Court below and therefore prayed for rejection of the Revision.

19. So far as Criminal Revision No. 264/2016 is concerned, according to the State Counsel name of the present Applicant B.K. Lala is also reflected from the first entry in the case diary i.e. entry made in the Rojnamcha Sanha on 08.09.2011 that is the information received by the secret informer in respect of the money transaction which was to take place between the present Applicant B.K. Lala and Soni Sori and Lingaram Kodopi. The State Counsel further submits that so far as the present Applicant is concerned almost practically all the witnesses have deposed very categorically in respect of the involvement of the

present Applicant with the Naxalite group.

20.In addition, there is this statement of Jagmandar who in fact was an employee of the Applicant B.K. Lala himself. He was working as supervisor in the plant belonging to the Applicant who has deposed the entire factual matrix of the case also the role played by the present Applicant. Thus, clearly bringing out incriminating materials against the present Applicant. There are statements of Jagmandar which also reflects that even in the past the said B.K. Lala have had close nexus with the Naxalites and had been providing money to the Naxalites Group. This statement of Jagmandar further gets fortified from the statement of the Sarpanch of the village Badebadar, Jairram Khoura who has also narrated role played by the present Applicants in the entire transaction and commission of offence. He too has disclosed the fact that in the past also the present Applicant B.K. Lala had been making payments to the Naxalites. In addition, there is statement of a Bank employee who has stated before the Police authorities that on the same day the Applicant B.K. Lala's son Aman has withdrawn an amount of Rs. 15 Lakhs. In addition, a diary was also recovered from the possession of the present Applicant B.K. Lala wherein also certain incriminating materials were recovered in respect of making payment to the Naxalites and reference of the other accused persons were also found in the said diary.

21.Thus, the State Counsel submits that there is enough material available in the case diary for framing charges against the

present Applicant and as such the Court below has not committed any error of law or for that matter any illegality or infirmity in framing charges which have been framed against the present Applicants accused persons.

22. So far as the judgments referred to by the Counsel appearing for the respective Applicants all the judgments have been decided under entirely different factual background in each of the present case. Under the criminal jurisprudence the principle laid down by a Court is normally under the given facts and circumstances of the said case and it cannot be uniformly or unilaterally made applicable in another case, it would vary from case to case depending upon the facts in each of the cases.

23. Thus, the judgment so laid down by the Supreme Court in the judgments referred to by the Counsel for the Applicants are distinguishable. Further more what is more important is the fact that the present cases are only at the stage of framing of charge and the parameters at the time of framing of charge are entirely different.

24. Some of the recent pronouncement of the Supreme Court in this regard is as under :-

The three judges bench of the Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi**¹⁴ considering the provisions of Sections 227 and 228 of the Cr.P.C. and also principles to be considered at the time of framing of charge has held that at the stage of framing of charge the defense of the accused cannot be put forth. It was also held by the Supreme

14 (2003) 2 SCC 711

Court that at the time of framing of charge all that the Court has to look into is the documents which are available in the case diary and on the basis of the said documents whether there is any prima facie material available to incriminate the accused persons and if there are slightest of material available, the Court would be justified in framing of charge. In the case of **Sajjan Kumar Vs CBI**¹⁵ while laying down broad principle that emerged on consideration of Sections 227 and 228 of the Cr.P.C. in paragraph 21.4 it has been held as under.

“If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.”

Further in the same judgment in paragraph 24 also the Court has held as under :

“At the stage of framing of charge under Section 228 CrPC or while considering the discharge petition filed under Section 227, it is not for the Magistrate or the Judge concerned to analyse all the materials including pros and cons, reliability or acceptability, etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and is free to take a decision one way or the other.”

25. Similar stand has been further reiterated by the Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander and Another**¹⁶ wherein the Supreme Court has 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

15 (2010) 9 SCC 368

16 (2012) 9 SCC 460

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.

26. Further, In the case of **N. Soundaram Vs. P. K. Pounraj and Another**¹⁷ 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 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 its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

27. Again in the case of **Vinod Raghuvanshi Vs. Ajay Arora and Others**¹⁸ the Supreme Court has held as under :-

“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

17 (2014) 10 SCC 616

18 (2013) 10 SCC 581

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."

28. At the time of framing of charge what needs to be considered is whether there is ground for presumption that the offence has been committed, and not, whether ground for convicting the accused has been made out. To put it differently if the Court thinks that the accused may have committed the offence on the basis of the material on record on its probative value it can frame the charge. Though for the purpose of conviction the consideration would be entirely different and at that time Court has to come to the conclusion that the accused has committed an offence. The law does not permit a mini trial to be held at the stage of framing of charge. A similar view has also been taken in the past in the case of **Onkar Nath Mishra & Others Vs. State (NCT of Delhi) & Another**¹⁹ This view has further been reiterated by the Supreme Court in the case of **Shoraj Singh Ahlawat & Others Vs. State of U.P.**²⁰.

29. In both these above referred judgments the view of the Supreme Court was that even a strong suspicion founded on materials which leads to the Court to factum of a presumptive opinion as to

19 (2008) 2 SCC 561

20 AIR 2013 SC 52

the instance of the factual ingredients constituting offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

30. So far as the judgments cited by the Counsel for the Applicants are concerned this Court has no hesitation in the accepting the fact that ratio laid down by the Supreme Court in these judgments were in the peculiar facts and circumstances in those cases and the nature of offence committed were also entirely different from what it is in the present cases and therefore all these citations are distinguishable on facts and would not help the Applicants in the instant cases where the allegations are altogether different and far more grave and serious.

31. So far as contention of the admissibility upon the statements of the co-accused persons for the purpose of framing of charge is concerned the Supreme Court in the case of **Mohd. Ajmal Kasab Vs. State of Maharashtra**²¹ has held that the since it is case where the allegation/charge of conspiracy made by the prosecution thereupon under the said circumstances the statement of the accused persons can not be brushed aside holding it to be totally inadmissible. In the said judgment the Supreme Court has very categorically held that under the peculiar circumstances of the case there is no reason for not taking confession into consideration to judge the charges against the Appellants.

32. Similar view has been taken by the Supreme Court in the case of

Yakub Abdul Razak Memon Vs. State of Maharashtra²²

21 (2012) 9 SCC 1

22 (2013) 13 SCC 1

wherein the Supreme Court reiterated the principles of law based upon Section 10 and 30 of the Evidence Act so far as the statement of the conspirator and its admissibility is concerned and in paragraph 147, 147.1 and 147.2 clearly makes it explicit. Thus, a strong reliance made by each of the Applicants so far as the charge having been framed only on the basis of the statements of the co-accused persons stands answered at least at this stage for the purpose of framing of charges.

33. Accordingly, it is not a case where under no circumstances can a statement of a co-accused be inadmissible. Whether and to what extent it is admissible would be decided by the trial Court after recording of the evidence on either side.

34. For all the aforesaid reasons and discussions and also law laid down by the Supreme Court and the judgments referred to in the preceding paragraphs, this Court is of the opinion that no strong cases have been made out calling for interference with the order of the Court below on framing of charge against the accused persons.

35. Thus, all the three Criminal Revisions deserve to be and are accordingly rejected.

Sd/-

(P. Sam Koshy)
Judge