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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Miscellaneous Petition No. 459 of 2016

Manoj Agrawal S/o Late Shri Banarshi Lal Agrawal, aged about 46 years, R/o Flat No. C-3, Gokul Apartments, Gayatri Nagar, Post - Shankar Nagar, P.S. - Telibandha, District Raipur, Chhattisgarh.

---- Petitioner

Versus

Smt. Priya Ramchandani W/o Shri Mahesh Ramchandani, aged about 34 years, R/o L-16, Awani Vihar, Daldal Sioni Road, Mowa, Police Station Mowa, District Raipur, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri D. K. Gwalre, Advocate
For Respondent	:	Shri Adhiraj Surana, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

23.09.2016.

The present petition under Section 482 CrPC has been filed seeking for quashment of the order dated 09.03.2016 passed by the Second Additional Sessions Judge, Raipur in Criminal Revision No. 3 of 2016. By the said order, the Revisional Court while rejecting the revision petition has affirmed the order of the Additional Chief Judicial Magistrate, Raipur dated 18.11.2015 passed in Criminal Complaint Case No.732 of 2011 whereby the ACJM had framed charges against the petitioner under Sections 409, 418 and 423 of IPC.

2. Brief facts relevant for adjudication of the present petition is that the respondent Priya Ramchandani had filed a complaint against the petitioner on 11.04.2008. As per the said complaint, the respondent-complainant and the wife of the petitioner namely Smt. Suman Agrawal formed a partnership firm on 25.04.2006 in the name and style of 'Water Care'. The business which the said partnership firm intended to carry out was cleaning and other maintenance works of the overhead water tanks. The said firm was having its bank account with SBI at their Santi Nagar Branch, Raipur bearing A/c No. 3006422201 in the name of Water Care. In due course of time, the said partnership firm appointed the petitioner who is the husband of one of the partners i.e. Smt. Suman Agrawal as an agent on behalf of the firm on 15% commission basis. The job of the petitioner was to do the field work and visit various customers of the firm and to collect the payments which were to be received by the firm and deposit the same in the bank account of the firm. However, sometime later, it was detected that the petitioner who was in fact an agent of the firm being operated by his wife and the respondent introducing himself as the proprietor of the said firm got opened separate bank accounts in the name of Water Care in Federal Bank, Raipur and also in Bank of India at Bhilai. The petitioner, in stead of depositing the collected money which was otherwise payable to the firm in the bank account of respondent’s firm i.e. SBI branch at Shanti Nagar, Raipur deposited the money in Federal Bank, Raipur as well as Bank of India, Bhilai. Thus, the petitioner has committed criminal breach of trust and cheating and also fraudulently got a bank account opened showing himself to be the proprietor of the firm 'Water Care' which in fact was a partnership firm operated by the respondent and the wife of the petitioner.

3. According to the complainant, on verification of the different works they had executed and the payment that they had received showed that the petitioner in fact had committed huge amount of misappropriation. Thus, sought for initiation of prosecution against the petitioner for the offence under Sections 409, 418 and 423 of IPC.

4. After filing of the complaint, the trial Court examined the witnesses before registration of the complaint and being convinced of an offence prima facie having been committed, registered a case as Criminal Complaint Case No. 732 of 2011. Further vide order dated 18.11.2015 the Magistrate after considering the entire facts and circumstances of the case framed charges against the petitioner for the offence under Sections 409, 418 and 423 of IPC.

5. This order of framing of charge against the petitioner was put to challenge before the 2nd Additional Sessions Judge, Raipur in Criminal Revision No. 3 of 2016 which was also rejected by the Revisional Court vide its order dated 09.03.2016 leading to the filing of the present CrMP.

6. Counsel for the petitioner submitted that the order on the part of the Court below in framing of charges against the petitioner was bad in law for the reason that for making out an offence under Section 409 IPC there has to be a specific entrustment made by the complainant in favour of the petitioner. According to the counsel for the petitioner, since the entrustment part is missing, offence under Section 409 IPC could not have been framed at all. Further referring to the statements of the witnesses examined at the time of registration of the complaint counsel for the petitioner submitted that on perusal of the contents of the documents itself clearly reflect that the allegation of misappropriation of the fund that has been referred to by the complainant and her witnesses, is not in fact a misappropriation but is the money which was not due for payment to the firm operated by the respondent as is clear from the transactions showing the payments pertaining to a period much prior to the firm of the respondent was established. The transactions pertain to a period where the respondent's firm did not have any short of contract with different municipal corporations from which the petitioner had received money. It was further submitted that the complaint is also doubtful for the reason that the clients from whom the money is alleged to have been received by the petitioner are in fact not the clients of the respondent. The name of the municipal corporation is not reflected in the list of major clients of the respondent firm and therefore there is a great element of doubt whether the respondent firm in fact had any short of transaction with different Municipal Corporations from whom it is alleged that the petitioner had received money which otherwise was payable to the firm of the respondent. He further submitted that the finding of the revisional Court in paragraph-15 of its order reflects that the Revisional Court itself was not convinced of there being an offence committed by the petitioner and it only doubted to the act to be a fraudulent act on the part of the petitioner.

7. In support of his contention regarding Section 409 IPC not being made out on account of the element of entrustment being missing, the counsel for the petitioner relied upon the judgments of the Hon’ble Supreme Court in the cases of V. P. Shrivastava Vs. Indian Explosives Limited and

Others[1] and Asoke Basak Vs. State of Maharashtra and Others[2]. Counsel for the petitioner further relied upon the judgment of the Supreme Court in the case of Dilawar Balu Kurane Vs. State of Maharashtra[3] on the issue of the scope of interference by the High Court on the question of framing of charge. He also relied upon the decision of the Supreme Court in the case of GHCL Employees Stock Option Trust Vs. India Infoline Limited and other connected matters reported in (**2013) 4 SCC 505** highlighting the fact of a person being implicated in a false case tried before the Court of law and summons being issued in his name.

8. Counsel for the petitioner assailing the framing of charge against the petitioner submitted that in fact the respondent had on an earlier occasion filed a complaint before the Police Authorities and on investigation, the Police Authorities did not find any offence to have been made out against the petitioner. For this reason also, the complaint case deserves to be rejected/quashed and the petitioner is liable for being discharged of the offences leveled against him. Thus, prayed for quashment of the charges framed against the petitioner.

9. Per contra, counsel for the respondent opposing the petition referred to the contents of the complaint and the documents which were enclosed along with the complaint demonstrating different cheques which were issued by the Municipal Corporation, Raipur for the work performed by the respondent company but the payment of which was received by the petitioner in the capacity of an agent of the respondent firm and got the amount credited in his account which he had opened projecting himself to

1 (2010) 10 SCC 361
2 (2010) 10 SCC 660
3 (2002) 2 SCC 135

be the proprietor of the firm in Federal Bank, Raipur as well as in Bank of India, Bhilai.

10. According to the counsel for the respondent, the act of breach of trust as well as cheating as per section 418 IPC and also the act of dishonest and fraudulent execution of the deed are prima facie reflected from the conduct of the petitioner firstly by opening of a separate bank account in the name of the firm which the petitioner very well knew that it belonged to the respondent and the wife of the petitioner where he was only an agent. Secondly, accepting the money for and on behalf of the firm operated by the respondent and depositing the amount payable to the respondent's firm in the bank account of the petitioner. According to the respondent, so far as framing of charge is concerned, these elements are strong ground enough for the Court below to firstly take cognizance and subsequently to frame charges against the petitioner. Thus, the scope of interference at the stage of framing of charge in exercise of the powers under Section 482 CrPC is very restricted.

11. Counsel for the respondent relied upon the decisions of the Supreme Court in the cases of Kanti Bhadra Shah Vs. State of W.B.[4], K. Ramakrishna and Others Vs. State of Bihar and Another[5] and State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption Vs. N. Suresh Rajan and Others[6].

12. Having considered the rival contentions put forth by the counsel on either side and on perusal of the record what clearly reflects from the record as well as the documents filed along with the petition is that undisputedly the respondent as well as the wife of the petitioner both had opened a

4 (2000) 1 SCC 722
5 (2000) 8 SCC 547
6 (2014) 11 SCC 709

partnership firm known as ‘Water Care’. The petitioner was appointed as an agent in the said firm on 15 % commission basis. It is also not disputed by the petitioner of having received money in the name of Water Care. Another fact which is not disputed is the opening of a separate bank account by the petitioner in the name of Water Care projecting him as a proprietor of the firm Water Care. Yet another fact which is also not disputed is the acceptance of money at different intervals by the petitioner in the name of Water Care and depositing the same in the account operated by the petitioner in the name of Water Care.

13. On a query being put to the counsel for the petitioner as to the justification on the part of the petitioner regarding the bank account being opened by him in the name of Water Care, he could not give a proper satisfactory explanation except for the fact that mere opening of the account by itself would not constitute an offence for which he has been charged. The petitioner has also not been able to establish or submit any evidence so far as the petitioner informing the respondent in respect of his operating a parallel bank account in the same name which was also operated by the respondent. Once when the petitioner has accepted of working as an agent for and on behalf of the respondent’s firm and there is a complaint with regard to mis appropriation of funds which were payable to the firm belonging to the respondent undisputedly being deposited bank account being operated by the petitioner in the name and same style of the firm being operated by the respondent, prima facie an act of cheating, fraud and breach of trust is reflected on the part of the petitioner. How far the complainant would be able to establish the case against the petitioner so as to convict him for the said offence is a matter of evidence. At the time of framing of charge all that the Court below has to see is that on the basis of 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.

14. Now, whether there is sufficient evidence and the said evidence are cogent enough to convict the accused is concerned, are all matter of evidence which could not and cannot be looked into by the court of law at the initial stage where the only consideration to be taken note of is whether prima facie offence is made out or not. 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. Even if there is a strong case of suspicion made out even then the Court is justified in framing of the charge.

15. So far as the law under Section 482 CrPC is concerned is by now a well settled 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 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.

16. The Hon'ble Supreme Court in the matter of **Amit Kapoor Vs.**

Ramesh Chander and Anr reported in (2012) 9 SCC 460 has very clearly laid down the principle that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that even, 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.

17. 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."

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 :

> "**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."

19. 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.

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

Sd/-
(P Sam Koshy)
Judge

Bhola