

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 918 of 2016**

- Manas Raj Kanhaiya S/o Late Ratan Lal Aged About 32 Years R/o Company Market, Behind High School, Ambikapur, Police Station Kotwali, Ambikapur, District Surguja, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Jaynagar, District Surajpur, Chhattisgarh.

---- Non-applicant

For Applicant	:	Mr. Sunil Tripathi, Advocate.
For Non-applicant /State	:	Mr. O.P. Sahu, Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****29/08/2016**

1. The present Petition has been filed against the framing of charge dated 01.07.2016 whereby the Trial Court in Criminal Case No. 336/2016 has framed charges against the present Petitioner for the offence punishable under Sections 419, 420, 467, 468 and 120(B) of the IPC.
2. Learned Counsel for the Petitioner submits that the complaint lodged by the complainant and the charge sheet as well as the documents annexed along with the charge-sheet would all show the fact that there is no role whatsoever on the part of the present Applicant to have been played in the execution of the sale deed by Sudam Shirivastava and Akash Pandey in the sale of property to Purshottam Agrawal. He further submits whatever act which is alleged to have

been played by the present Petitioner, it was nothing but discharge of his official duties and therefore any offence under Section 419, 420, 467 and 468 of the IPC should not be constituted. Further there is no evidence in the case diary so far as meeting of minds between the parties for the purpose of constituting offence under Section 120B of the IPC is concerned which is a necessary ingredients for an act under conspiracy. Thus, the Petition deserves to be allowed and the charges framed against the Petitioner deserves to be quashed.

3. Learned Counsel for the Petitioner relied upon the judgment of the Hon'ble Supreme Court in case of **P. Vijayan Vs. State of Kerla and Another**¹ wherein he relied upon the paragraph No. 9 & 10 which reads as under:-

"9. The questions that arose for consideration in this appeal are (i) whether the appellant established sufficient ground for discharge under Section 227 of the CrPC, and (ii) whether the Trial Judge as well as the High Court committed any error in rejecting the claim of the appellant.

10. Before considering the merits of the claim of both the parties, it is useful to refer Section 227 CrPC, which reads as under:-

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts."

1 (2010) 2 SCC 398

4. Learned State Counsel however opposing the petition submits that there is sufficient evidence brought on record by the prosecution showing the involvement of the present Petitioner in the said offence, therefore prayed for rejection of the present Petition.
5. Having considered the rival submissions putforth and a perusal of the record what clearly reflects is the admitted facts of the case. That the Petitioner in the capacity of working as Patwari of village Poddipa, Tahsil and district Surajpur has issued Rin-Pustika. Later on Sarpanch of the said village found that the Rin-Pustika was fraudulently obtained in as much as Rin-Pustika has been issued in favour of Peer and Gahbal who have expired long ago yet the Rin-Pustika were issued in their names. So far as the contention of the Counsel for the Petitioner is that the present Petitioner has not played any active role in the commission of the said offence, this fact whether he has played any role or not is a matter which could be thrashed out only after the prosecution leads evidence on its behalf to support to establish charges which have been framed against him. Whether there was conspiracy or not are also a fact which can be proved only by way of evidence. From the material on record what is prima facie reflected is that there has been a Rin-Putstika fraudulently issued and the said Rin Pustika has been issued by the present Petitioner who was Patwari of the said village. Before issuing of the said Rin-Pustika the Patwari ought to have verified the total facts and circumstance of the case by conducting an investigation. The Rin-Pustika should not have been issued only on the basis of some documents which might have been produced before him sitting inside the four corners of the office room of the Patwari.

6. It is not the case where there is no evidence against the present Petitioner. The fact that the Rin-Pustika has been issued by the present Petitioner appears to be a prima facie material against him and whether there was any meeting of mind with the respondents for constituting the offence of cheating and fraud are all matters of evidence.
7. So far as the judgment of the Supreme Court relied upon by the Petitioner that of P. Vijayan (Supra) facts of the said case is entirely different as compared with the facts of the present case where there is prima facie, a Rin-Pustika which has been issued by the present Petitioner and which is the genesis of the offence.
8. The Supreme Court in **Amit Kapoor Vs. Ramesh Chander and Another**² 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 to be applied at that stage.
9. In the case of **N. Soundaram Vs. P. K. Pounraj and Another**³ 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

² (2012) 9 SCC 460

³ (2014) 10 SCC 616

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.”

10. Again in the case of **Vinod Raghuvanshi Vs. Ajay Arora and**

Others⁴ 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.”

11. For the foregoing reasons this Court is of the opinion that no strong case has been made out calling for interference with the charges which has been framed against the present Petitioner.

12. Accordingly, the present Petition being devoid of merits stands dismissed.

Sd/-

**(P. Sam Koshy)
JUDGE**