

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1350 of 2016**

Tameshwar Prasad Sahu S/o Shri Hemrai Sahu, aged about 34 years,
R/o Janjgiri (BMY) Charoda, Thana, Bhilai-3, Tehsil and District Durg
(CG).

---- Petitioner**Versus**

1. State of Chhattisgarh Through District Magistrate, District Durg (CG).
2. Station House Officer, Police Station Purani Bhilai, Distt. Durg (CG).
3. Ghanshyam Sahu, S/o Shri Jinath Sahu, R/o village Budera, Thana, Kharora, District Durg (CG).

---- Respondents

For Petitioner	:	Shri Vinay Pandey, Advocate.
For Respondent/State	:	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/01/2017**

1. The present petition under Section 482 CrPC has been preferred seeking for quashment of charge sheet filed against the petitioner in Crime No.175/2016 registered at Police Station, Old Bhilai on 04.04.2016 for the offence under Section 406 IPC.
2. Counsel for the petitioner assailing the charge sheet submits that if the allegations leveled by the complainant i.e. respondent No.3 is taken into consideration, the basic ingredients required for making out an offence under Section 406 IPC is missing. According to him, there is no act of criminal breach of trust made out from the allegations levelled. Therefore, the registration of FIR as also submission of

charge sheet is per se illegal and requires to be quashed. It is a case where the petitioner and the respondent No.3 were infact in good terms and were having friendship for a very long time. In between, the respondent No.3 is said to have purchased a vehicle under the hypothication from the Bank and in addition one more vehicle which was of another person which was entrusted to the respondent No.3 for its operation, were on mutual and oral agreement handed over to the petitioner with a condition that Equal Monthly Installment (in short, EMI) payable to the Bank on account of loan for purchase of said vehicle would be paid by the petitioner and after completion of EMI the said vehicle be transferred in the name of petitioner. In compliance to the said oral agreement, the petitioner honoured the condition of paying monthly EMI to the Bank and has by now paid the entire dues outstanding in the name of respondent No.3. Now when the ownership of said vehicle was finally to be transferred in the name of the petitioner, the respondent No.3 has falsely made a complaint against the petitioner for the offence under Section 406 IPC.

3. It was also contended by the petitioner that the aforesaid averment clearly reflects that the nature of dispute which has been alleged by the petitioner is nothing but a pure civil dispute between the two individuals. He further submits that even if the entire allegations is accepted as it is even then the nature of dispute is one which could be resolved only from the civil disputes redressal forums and no criminal offence as such is made out from the said allegation. Therefore, the charge sheet needs to be quashed.

4. Having considered the rival contentions put forth on either side and on perusal of charge-sheet particularly the FIR, it clearly reflects that the allegation against the petitioner was that because of friendship which the petitioner had with the respondent No.3, the respondent No.3 handed over two vehicles to the petitioner for operating it on commercial basis on monthly rent of Rs.50,000/-. It was also agreed that the said amount of rent be paid by the petitioner in the Bank as clearance of the monthly EMI which the respondent No.3 had to pay on account of loan which was taken by him for purchase of said vehicle. The allegation against the petitioner is that inspite of fact that the petitioner had operated the vehicles for the entire period and had earned profit, now he is neither paying the monthly rent nor is returning back the vehicles to the respondent No.3 which had led to lodging of complaint by the respondent No.3.
5. According to respondent No.3, the fact that petitioner had defaulted himself from paying the monthly EMI/rent for the vehicle which was being operated by the petitioner for commercial purpose and the fact that he has also refused to handover the possession of the vehicle back to the respondent No.3 is one which would fall within the ambit of criminal breach of trust. During the course of argument, it was revealed that after filing of charge-sheet now the case before the trial court is fixed for the argument before framing of charge.
6. True it is that this court under Section 482 CrPC can quash an FIR and charge-sheet in case if prima facie the contents of the complaint

would not disclose the commission of offence whatsoever, but at the same time also it is a settled legal position that the powers under Section 482 CrPC has to be used sparingly by the High Court and it is not to be exercised as a matter of routine. The very provision of Section 482 CrPC clearly stipulates that it can be exercised only in the event of their occurring two circumstances i.e. whether the entire process initiated before the court below is nothing but a misuse of process of court, and secondly if the court finds that the power has to be exercised to meet the ends of justice.

7. Taking in to consideration the fact that now after filing of charge-sheet if the case itself is fixed before the trial court for arguments before framing of charge, all the contentions raised in this petition can be raised before the court below. In case if the court finds that there is no merit in the complaint made by the complainant and that the nature of complaint does not meet the necessary ingredients required for making out an offence under Section 406 IPC, then the trial court itself can discharge the petitioner.
8. This court while hearing a petition under Section 482 CrPC would not conduct a roving inquiry or a mini trial so as to reach to the conclusion as to whether the offence has been made out or not and whether the available materials could lead to the conviction of the petitioner or not. These are the facts which would be adjudicated upon at the relevant time after the evidences are recorded. Moreover, in the present case, the petitioner would also be at liberty to address the trial court at the

time of framing of charge, if ultimately sanction is granted or obtained by the prosecution in this regard from the government.

9. Thus, this court is of the opinion that it would not be proper at this juncture to exercise its discretionary jurisdiction under Section 482 CrPC and therefore, the petition deserves to be and is hereby dismissed. However, the petitioner would be at liberty to raise all his contentions which has been raised in this petition before the court below while arguing the matter before framing of charge.

Sd/-
(P. Sam Koshy)
Judge