

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 29 of 2017**

1. Subir Roy S/o Late J.C. Roy, Aged About 54 Years R/o House No. 3, Block 4, Kuber Enclave, Kohka, Bhilai Thana, Supela, District Durg, Chhattisgarh.
2. Shantana Roy W/o Sudhir Roy, Aged About 50 Years R/o House No. 3, Block 4, Kuber Enclave, Kohka, Bhilai Thana, Supela, District Durg, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh Through Station House Officer, Police Station Bhilai, District Durg, Chhattisgarh.
2. Rajiv Kumar Vaidya, S/o Arun Kumar Vaidya, Aged About 48 Years R/o Sector 7, Avenue A, Qtr. 7/ B, Bhilai Nagar, District Durg, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri Himanshu Sinha, Advocate.
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****10/01/2017**

1. The present petition under Section 482 CrPC has been filed seeking for quashment of charge sheet dated 08.11.2016 arising out of Crime No.11/2016 based on which offence under Sections 420,467,468 and 470/34 IPC and Section 10 of the Chhattisgarh Investor Protection Act, 2013 have been registered against the petitioners.
2. The facts of the case is that an FIR was registered against the petitioners on a written complaint made by the respondent No.2 to the Superintendent of Police and other police authorities at Police Station Kotwali, Sector-6, Bhilai. It was alleged by the respondent No.2 in the

said complaint that the petitioners have defrauded large number of people on the pretext of either providing them property, ready made house or even on the ground of getting their houses constructed and subsequently the petitioners is said to have fled away from Durg. Based on said complaint, FIR was lodged as crime No.11 of 2016 on 13.04.2016.

3. Subsequently, an inquiry is said to have been conducted and in the course of inquiry it was revealed that the petitioners have defrauded as many as more than 19 persons and have earned more than one crore rupees from the said 19 persons and thereafter fled away. It is only on 11.08.2016 they could be arrested from Delhi.
4. Counsel for the petitioners assailing the filing of charge sheet submits that the petitioners have been falsely implicated in the case inasmuch as the petitioners do not in any manner directly or indirectly relate to any of those transactions which have been recorded by the respondent No.2. On the contrary, it is a case where both the petitioners (Husband and Wife) were infact partners and carrying business with the respondent No.2 and his wife. It is a case where the petitioners were involved in the business of construction and in the course of business they had entered into certain agreements for getting the house constructed for the persons who had come to them and that so far as the complainant or other persons who have been cheated as recorded in the FIR is concerned, the petitioners did not have any sort of transaction with them particularly in respect of construction of the house.

5. Counsel for the petitioners further submits that all those transactions which have been recorded by the prosecution or that which have been provided by the respondent No.2 are forged, fabricated and concocted documents. The signatures reflected in the said documents are not of the petitioners. Even if for argument sake the said documents are accepted, it clearly reflects that it is a commercial transaction in respect of construction of house or purchase of property and in case if there is any breach of conditions, the individual complainant would have remedy of approaching the civil court either by way of filing of civil suit for recovery or a suit for specific performance of contract. The nature of dispute between the parties being purely civil in nature, no criminal act is established and the entire charge sheet deserves to be quashed.
6. Counsel for the petitioners relies upon the judgment of Supreme Court in case of Iridium India Telecom Limited Vs. Motorola Incorporated and Others, reported in 2011 (1) SCC 74, wherein the Supreme Court has held that where the dispute is an economic and commercial transaction etc. the parties to the dispute should be relegated to file civil suit and criminal jurisprudence should not be permitted to be invoked. He further submits that true it is that certain cheques which have been issued by the petitioners to certain complainants have been dishonored, but the remedy available to them for such dishonor of cheques would be filing of appropriate case under the provisions of Negotiable Instrument Act. For such cases, criminal offences under Sections 420, 467, 468 and 470/34 would not be made out and

therefore, on this ground also the charge sheet deserves to be quashed.

7. The State counsel however opposes the petition and submits that it is a case where serious allegations have been levelled against the petitioners to have cheated large number of people and have earned huge amount of money from those persons. It is also contended that the offence committed by the petitioners clearly brings home the ingredients required for making out a case of cheating and fraud. He further submits that at this stage, all that the court has to see is whether there is sufficient materials available before the court below for registration of complaint and which from the contention of the petitioners as well as the document enclosed along with the petition itself is evidently established. Thus, prayed for dismissal of the petition.
8. State counsel also drew the attention of the court to the complaint lodged by the respondent No.2 wherein he has categorically submitted that the house in which the petitioners were residing is originally owned by one B.K. Murugan and the petitioners were residing in the said house in the capacity of tenant, however, by playing fraud and creating a fake document of B.K. Murugan intending to sale the said property, the petitioners have received an amount of Rs.40 lakhs in two installments against the purchase of said property. After getting money, it is stated that they shifted somewhere and were later on not traceable and their mobile phones were also switched off. Subsequently, when the respondent No.2 contacted the owner of the

said property i.e. B.K. Murugan, he learnt about the alleged fake agreement to sale and the fraudulent act on the part of the petitioners. It was then that he was compelled to file a written complaint against the petitioners. It is also submitted that prima facie there is strong material available against the petitioners and in the given factual matrix of the case unless the matter is trashed out by recording evidence, it cannot be said that petitioners are innocent or is not involved in commission of the said offence and thus prayed for rejection of the petition.

9. Having considered the rival contentions put forth on either side and on perusal of record, it clearly reflects that there are strong allegation made against the petitioners of cheating as many as 19 persons and by the said act they have earned more than one crore rupees illegally. From the materials available in the case itself prima facie it appears that they have committed fraud with many persons. Thus, this court has no hesitation in reaching to the conclusion that prima facie the ingredients that are required for registration of FIR is made out. All the other aspects which the petitioners intend to assail are their defence and which can only be looked into after the evidence on either side are adduced and which cannot be looked into at this stage.
10. So far as judgment cited and relied upon by the petitioners is concerned, the same is on entirely different factual matrix and is distinguishable on its own facts. Even in the said judgment, the Supreme Court has held that the powers under Section 482 CrPC has to be exercised by the High Courts sparingly with circumspection and

in the rarest of rare cases.

11. 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 petitioners 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 petitioners would also be at liberty to address the trial court at the time of framing of charge.
12. 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.
13. In **Amit Kapoor Vs. Ramesh Chander and Anr**, (2012) 9 SCC 460, the Supreme Court has very 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 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.

14. 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.”

15. 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.”

16. 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 filing of charge sheet against the Petitioners calling for an interference invoking the extraordinary inherent powers under Section 482 CrPC conferred upon this Court.
17. Accordingly, the petition is dismissed.

Sd/-
(P. Sam Koshy)
Judge