

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 118 of 2017**

Nehru Lal Pankaj S/o Shri Jagat Ram Aged About 53 Years Then  
Posted As Sub Registrar At Tilda, District Raipur, Chhattisgarh. Now  
Permanent Address R/o Village : Gobra, Post Churtela, Police  
Station : Dabhra, District Janjgir- Champa, Chhattisgarh.

**---- Applicant**

**Versus**

Investigating Officer/ Station House Officer, Economic Offence  
Wing / Anti Corruption Bureau, Raipur, Revenue & Civil District  
Raipur, Chhattisgarh.

**---- Respondent**

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For applicant - Shri L.C. Dash, Advocate.  
For Respondent/State –Shri Suryakant Mishra, PL.

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**Hon'ble Shri Justice Goutam Bhaduri****Order****01/05/2017**

1. This revision is against framing of charge.
2. As per the prosecution case, Shri O.P. Verma had purchased the land at village Tandwa. It is alleged that O.P. Verma, Deputy Collector Jashpur had purchased the lands in the name of his wife and children. The fact came to fore when a raid was conducted in the house of O.P. Verma by Anti Corruption and certain sale deeds were recovered numbering into 21. Subsequently, it was found that in order to eliminate the evidence the applicant had already allowed the rectification deeds to be registered wherein name of the seller was changed other than the original seller Rekha Verma. Instead of purchaser Rekha Verma, name of different company/firm/trust Ruchi Agrocum Company Pvt. Ltd., Prashansha Educational Trust & Khyati Educational Trust were mutated and purchasers were substituted. By such rectification thereby forged documents were created in connivance with other person which caused loss to the government ex-chequer and also forged documents were

prepared to eliminate evidence of corruption. Consequently, charges were framed for offence under section 13(1)(d), 13(2) of the Prevention of Corruption Act read with Section 120-B of IPC.

3. Learned counsel for the applicant would submit that offence offence under section 13(1)(d) and 13(2) of the Prevention of Corruption Act read with 120-B of IPC cannot be registered as he had discharged his duty in the official capacity. Learned counsel submits that maximum it can be attributed that applicant has failed his duty to raise proper stamp duty over the sale deed, therefore case is not made out.

4. Perusal of the documents filed along with the petition would show that raid was conducted in the house of O.P. Verma and documents were recovered and during such investigation it was found that applicant who was working as Sub Registrar has subsequently in connivance with each other has committed the offence and name of the purchaser were substituted, therefore offence under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act read with 120-B of IPC was registered. FIR was registered against the applicant and Smt. Rekha Verma in whose name properties were purchased. Prima facie it would show that name of the purchaser was Rekha Verma but on the basis of deed of rectification owners were changed. The Anti Corruption Bureau had conducted the raid in house of O.P. Verma, the Deputy Collector and the deeds were recovered which prima facie shows that in connivance with other accused the ownership of land were changed on the basis of rectification deed. This may eventually prima facie may be presumed to eliminate the evidence. Taking into case in totality, considering the prima facie case charges have been framed against the applicant as it was not permissible for him to do and inference was drawn he having done rectification.

5. The Supreme Court in a case law reported in **AIR 2013 SC 52** –

**Shoraj Singh Ahlawat Vs. State of U.P** has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

**“240. Framing of charge.-** (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

6. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in **Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)**.

7. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at

that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?

8. Therefore, reading the contents of FIR and the documents would go to show that strong suspicion about existence of facts constituting offence is made out at this stage, when the evidence is not adduced.

9. Further the Supreme Court in a case law reported in ***M/s. Zandu Pharmaceutical Works Ltd. And others v. Md. Sharaful Haque and others (AIR 2005 SC 9)***, held thus :-

*“8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of*

*administration of justice on the principle “quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look in to the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”*

10. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of **State of Rajasthan Vs. Fatehkaran Mehdu**<sup>1</sup>. It is stated that framing of charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of

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<sup>1</sup> AIR 2017 SC 796

charge is not a stage, at which stage final test of guilt is to be applied.

11. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the petitioner cannot be accepted as gospel truth. The same has to be decided on the floor of the Court during evidence while they are tested by virtue of examination and cross examination.

12. Therefore, in view of the forgoing discussion I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE