

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 20.09.2017

Judgment Delivered on : 31.10.2017

CR.R. No. 105 of 2013

Sarvesh Dheer, S/o. Shri B.K. Dheer, Aged About 39 Years, R/o. At MIG -19, Indrawati Colony, Raipur, Post - Kachhari Branch, P.S. - Civil Lines, Raipur, Distt. - Raipur C.G. Pin Code - 492001.

---- Petitioner

Versus

1. Smt. Manju Sandilya, W/o. Late Shri Upendra Sandilya, Aged About 68 Years, R/o. At M-25, Rajiv Nagar, Raipur, Post - Shankar Nagar, PS - Civil Lines, Raipur, Distt. Raipur C.G. Pin Code - 492001
2. Sachin Sandilya, S/o. Late Shri Upendra Sandilya, Aged About 40 Years, R/o. At M- 25, Rajiv Nagar, Raipur, Post - Shankar Nagar, PS - Civil Lines, Raipur, Distt. - Raipur C.G. Pin Code - 492001.
3. The State of Chhattisgarh, Through : The Distt. Magistrate, Raipur, Distt. - Raipur C.G. Pin Code -492001.

-----Respondents

For Petitioner	: Mr. Kishore Bhaduri with Mr. Roop Naik, Advocates
For Respondent No.1 & 2	: Mr. Sunil Pillai & Mr. Sumit Raghuvanshi, Advocates
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

31/10/2017

1. This revision petition has been preferred against the order dated 13.12.2012, passed by the Second Additional Sessions Judge,

Raipur, in Criminal Revision No.155/2012, whereby the complaint case registered against the respondent No.1 and 2 has been quashed and they have been discharged.

2. Brief facts of the case are that respondent No.1 and 2 approached the parents of the applicant/complainant stating that they want to establish an educational institute in the name and style of Gyan Ganga Education Academy. On being induced, the parents of the applicant advanced Rs.1,50,000/- on 12.09.1991 as loan @ 15% interest. It was assured that share in the academy shall be allotted to the applicant and also assurance was given that the applicant will be appointed as director of the academy. Applicant was minor at that time, hence, all the transaction was between father of applicant – B.K. Dheer and the respondent No.1 and 2. Gyan Ganga Education Academy, Raipur was registered on 17.02.1992, but the amount paid on behalf of the applicant were not entered in the cash book to avoid payment of interest.
3. An agreement was entered between Smt. Suman Dheer, Upendra Shandilya, Ravindra Pal Singh & Smt. Raj Kumari Kanda and the academy was established as company Gyan Ganga Education Institute Private Limited. The registers, accounts and membership registers were manipulated by the accused persons. No interest was paid by the respondent accused persons and on their demand further Rs.1,65,000/- was advanced by the father of the applicant on 19.11.1992 through cheque. After death of Upendra Shandilya, party to the agreement, respondent accused persons, were made directors of the company, who have refused to provide with the

accounts of company to the applicant, no share were allotted to the applicant and neither the applicant has been named as director of the company. On these grounds, a complaint case was filed before the Court of Chief Judicial Magistrate, Raipur. By order dated 08.03.2001, cognizance was taken by the trial Court for trial of offence under Section 420, 406/34 of the Indian Penal Code against the respondents/accused persons. After closure of evidence before charge, application was filed by the respondent/accused persons under Section 245 of Cr.P.C. praying for discharge. This application was rejected by the order dated 17.04.2012. This order was challenged in the revision before the revisional Court below and the revisional Court by allowing the revision petition has quashed the complaint case registered against the respondent No.1 and 2 and they have been discharged.

4. This criminal revision was first decided by this Court on 19.09.2013 allowing the revision petition and restoring the complaint case against the private respondents. Private respondents filed a criminal appeal No.1154/2014, before the Supreme Court of India. By order dated 07.05.2014, the order passed by this Court was set-aside and it was held that this High Court has allowed the revision petition on assumption that evidence before framing of charge has not been concluded in the case and further the merits of the case was not considered by this Court. After setting-aside the order of this Court, the matter has been remitted for reconsideration. Hence this revision petition is being disposed off as per the directions given by Hon'ble Supreme Court.

5. It is submitted by the learned counsel for the applicant that the impugned order passed by the revisional Court is erroneous, against the facts and principles of law. The order passed by the trial Court was just and proper needed no interference. In passing the impugned order, the learned revisional Court below has exceeded its jurisdiction by appreciating the documents filed by the respondent/accused persons, which was not needed to be considered for the first time at the revision stage. It is submitted that the amount invested on behalf of the applicant is not denied, there had been evidence to show that respondent accused persons have prepared forged documents on account register etc. that the company is running at loss. As per the documents of the company, the applicant and his relatives have 84% share in the company, even then they have been deprived from the position of director.
6. The statement recorded by the applicant/complainant and the witnesses was sufficient to take cognizance in the case. During the pendency of the complaint case, Writ Petition (Cr.) No.272/2011 was filed before this Court, in which order dated 12.09.2011 was passed by this Court directing the trial Court to decide the complaint case expeditiously. Learned revisional Court has failed to appreciate the documents filed along with the complaint case. On the basis of the material placed in the complaint case, the respondent accused persons could not have been discharged. Hence, it is prayed by this revision petition to set-aside the impugned order. Counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in case of ***State of Tamil Nadu Vs. N.***

Suresh Rajan & Ors. reported in **2014 (11) SCC 709**, **Ajoy Kumar Ghose Vs. State of Jharkhand & Anr.** reported in **2009 (14) SCC 115**, **Hem Chand Vs. State of Jharkhand** reported in **2008 (5) SCC 113**, **Medical Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd.** Reported in **2000 (3) SCC 269**, **Devender Kumar Singla Vs. Baldev Krishna Singla** reported in **2005 (9) SCC 15**, **State, through : Inspector of Police Vs. A. Arun Kumar** reported in **2015 (2) SCC 417**.

7. Counsel for the private respondents submits that in the statement of petitioner/complainant, there is nothing directly against the respondents/accused persons. The agreement at Annexure A-20 clearly shows that respondent/accused persons had not been a party to that agreement. The learned revisional Court has rightly held in the impugned order that respondent/accused persons can not be held criminally responsible for the act done by their father late Upendra Shandilya, hence, no cause of action arises against the respondent/accused persons.
8. I have heard the learned counsel for the parties and perused the documents placed on record as well as the record of both the Courts below.
9. The Hon'ble Supreme Court in case of **Hemchand Vs. State of Jharkhand**, reported in **(2008) 5 SCC 113** has held that Court can not evaluate the evidence at the stage of framing of charge. Relying on the judgment passed in case of State of **M.P. Vs. Mohan Lal Soni**, reported in **(2000) 6 SCC 338** has held that the crystallised judicial view is that at the stage of framing charge, the court has to

prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. It was also held that Court has limited jurisdiction in revision and the documents filed by the accused can not be appreciated at this stage.

10. In the statement recorded by the petitioner, it is stated that Upendra Shandilya, Laxminarayan Shandilya and Ravindra Pal Singh approached to the father of the petitioner to induce him to invest in their academy and written agreement was entered between them in the year 1991. Later on Rs.1,65,000/- was further advanced to Upendra Shandilya, Laxminarayan Shandilya and others. It is stated that after death of Upendra Shandilya, respondent No.1 and 2 have been appointed as director of the company, who are cheating the petitioner by forging the documents, register and accounts of the company, showing that company is running at loss. Opportunity to cross-examine this witness was afforded to the private respondent. In cross-examination of C.W.-1/applicant, he has admitted that respondent No.1 and 2 were not a party to the transaction. The photocopy of agreement has been provided and stated that petitioner/complainant is not in possession of the original agreement. It is also submitted that civil suit is also pending against the respondents and others.
11. Admittedly petitioner/complainant were not a party to the agreement. B.K. Dheer, the father of the petitioner/complainant, who has stated similarly about advancing of loan and the assurance

given by Upendra Shandilya and others. In the cross-examination he has admitted that agreement took place between him and Upendra Shandilya and other parties, in which petitioner/complainant was not a party. Similarly, respondent No.1 and 2 are also not a party to the agreement. Apart from this admission made by the complainant witnesses, there are allegations against respondent and others accused persons regarding falsification of accounts register.

12. It is true that document produced by the accused persons can not be looked into at the stage framing charge, but in cases of offence like forgery and falsification of documents registers, there is a specific requirements of evidence at the stage of framing charge to show that prima-facie documents concerned show falsification or forgery. The trial Court in order dated 17.04.2012, made a vague statement that on perusal of documents, no grounds of discharge of accused/respondents persons is made out. In such case specific mention of the documents, which are alleged to have been falsify and forged are needed to be referred, such documents are required to be filed in support of corroboration of the statement orally made by the witnesses.
13. As the allegation against the private respondents/accused persons in the complaint and in the statement of the witnesses is also this that they are the persons responsible for falsification and forgery of the records i.e. register account books etc. it was needed to be taken special care of while deciding the application for discharge along with passing orders for framing charge.

14. Revisional jurisdiction has already been exercised before the Sessions Court, hence, petition before this Court though registered as criminal revision has to be entertained as petition under Section 482 of Cr.P.C. under the inherent jurisdiction of this Court.
15. By the impugned order, the only reasons that has been taken into account for discharge of accused persons is this, that they without being the party of agreement, could not be held responsible for the act committed by their father. In the matter of breach of agreement, private respondents may not be held responsible but the alleged act of fraud, cheating, forgery and falsification of record are different that has continued after the demise of Upendra Shandilya and after arrival of private-respondent on the seat of the director of the company as alleged. The alleged fraud, cheating, falsification of record etc. has been committed or not is different aspect to be considered on the basis of the material available on record and the required evidence as it is necessary to establish commission of offence of forgery etc. in a specific manner, hence the only reason taken into consideration by the revisional Court can not be held as a valid reason for allowing the revision petition and discharging the private respondents.
16. Further it is found that the order dated 17.04.2012, passed by the trial Court is not a well reasoned order, which has been passed in a very casual manner by making vague statement. The order on application under Section 245 Cr.P.C. and the order considering the framing of charge should have been dealt with together by the trial Court. Deciding the application under Section 245 of Cr.P.C. and

putting off the case for order on framing charge is not a proper course that should be adopted by the trial Court. The prayer of accused for discharge and consideration on framing of charge have to be taken simultaneously by the trial Court.

17. Hence, in view of the reasons mentioned here in above, this petition deserves to be allowed and it is hereby allowed using extra ordinary jurisdiction of this Court. The impugned order passed by the Second Additional Sessions Judge, Raipur dated 31.12.2012 and the order dated 17.04.2012 passed by the Judicial Magistrate First Class, Raipur are set-aside. The application under Section 245 of Cr.P.C. is revived to be considered by the trial Court. Trial Court is directed to give opportunities to the party to make submission on framing of charge and on discharge, thereafter, pass reasoned order in accordance with law.
18. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge