

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 238 of 2017

Kailash Soni S/o Moolchand Soni, Aged About 50 Years Occupation
Sunari Work, R/o Kotra Road, Police Station City Kotwali, Tahsil &
District Raigarh, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The District Magistrate, Raigarh,
District Raigarh, Chhattisgarh.

---- Respondent

For petitioner – Shri Awadh Tripathi, Advocate.

For Respondent/State – Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

27/02/2017

1. Heard.

2. This petition is against the order dated 6/01/2017 passed by the Court of Fifth Additional Sessions Judge, Raigarh in Criminal Revision No.136/2016 whereby the order framing charge in Criminal Case No.414/2014 in State Vs. Santosh Burman & Ors on 18/07/2016 whereby charges under Section 419, 420, 467, 468 and 471 all read with Section 120-B of IPC was affirmed.

3. Brief facts of this case are that one Shyam Soni had filed a complaint on 29/11/2010 against Nitin Sinha and others with the allegations that at village Gopalpur land bearing Khasra No.217/2, 217/3, 217/4 was recorded in the name of Ramlal S/o Bhagirathi in the revenue record. The records were further manipulated and instead of Ramlal, name of Shyamlal was recorded. Subsequently, sale deed was executed by such Shyamlal and it was sold to Nitin Sinha and Laxman Chandra. Thereby instead of Ramlal, Shyamlal had executed the sale

deed. It was alleged that the petitioner along with others have conspired to execute such sale deed.

4. Learned counsel for the petitioner would submit that the petitioner has not committed any offence and only the petitioner has shown the land to the complainant, thereby no allegation can be attributed to the petitioner and charges so framed are completely without any fact or legal support, as such the charges so framed needs to be quashed.

5. Per contra, learned State counsel opposes the same.

6. Perused the order dated 6/01/2017 passed by court of Additional Sessions Judge. The order records that name of Shyamlal was recorded by manipulation in the revenue record. Perused the statement of Sachin Sinha, Narendra Choubey, Bhuneshwar Katju wherein it purports that complainant has also showed the land to identify the land which was subject of sale alongwith the other co-accused. Thereby the petitioner was not foreign to the entire transaction complained. In view of such facts, it appears that the trial court after going through the statement has framed the charges.

7. 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.”

8. 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)***.

9. 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 applicants, 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 ?

10. 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.

11. 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.”

12. 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.

13. Consequently, 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

