

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 227 of 2017

1. Sanjay Sahu, S/o. Dayaram Sahu, Aged About 39 Years, Occupation -Agriculture , R/o Kaserpara, Raigarh & District Raigarh, Chhattisgarh.

----Petitioner

Versus

1. State Of Chhattisgarh, Through The District Magistrate, Raigarh, District -Raigarh, Chhattisgarh.
2. Nitin Sinha, S/o. Kamlesh Prasad Sinha, R/o. Near T.V. Tower, Chhote Atarmuda Raigarh, Tahsil & District Raigarh, Chhattisgarh.
3. Badka Dau Khunte @ Konda, S/o. Fagnu Khunte (Bhyam Lal Forged), R/o Jagatpur Deendayal Jawahar Nagar, Tahsil & District Raigarh, Chhattisgarh.
4. Laxman Chandra, S/o. Kaushal Kumar Chandra, Aged About 35 Years, R/o. Chhote Atarmuda, Tahsil & District Raigarh, Chhattisgarh.
5. Santosh Kumar Burman, S/o. Kalash Ram @ Valap Ram, R/o. Village Gopalpur, Tahsil & District Raigarh, Chhattisgarh.
6. Abhimanyu Sidar, S/o. Bhambhunath Sidar, R/o. Village- Bhikharimal, Tahsil & District Raigarh, Chhattisgarh.
7. Kailash Soni, S/o. Late Moolchand Soni, R/o. Baulikunwa Kotraroad, Raigarh, Tahsil & District Raigarh, Chhattisgarh.
8. Tandaram Khadiya, S/o. Dukhram Khadiya, R/o. Lamhidarha, Police Station- Chakradharnagar, Tahsil & District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Awadh Tripathi, Advocate
For Respondent/State	: Mr. Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/02/2017

1. Challenge in this petition is to the order dated 06.02.2017, passed by the learned Additional Sessions Judge, Raigarh, District – Raigarh (C.G.), in Criminal Revision No.111/2016, whereby the revision preferred against framing of charge was dismissed by the learned Additional Sessions Judge. The charges were framed by an order

dated 18.07.2016, in Criminal Case No.414/2014 by the Judicial Magistrate First Class Raigarh, against the petitioner under Section 419, 420, 467, 468, 471 read with Section 120-B of Indian Penal Code.

2. The brief facts of the case are that one Shyam Singh Soni filed a complaint on 29.11.2010 alleging that the land bearing Kh.No.217/2, 217/3, 217/4, situated at village-Gopalpur was recorded in the name of Ramlal, S/o. Bhagirathi Yadav in the revenue record was manipulated and instead of Ramlal, name of Shyamlal was recorded, thereafter the purchasers and others including the petitioner has conspired and sale deed dated 06.03.2010 was executed in the name of Nitin Sinha and Laxman Chandra. Subsequently the purchasers got their name mutated in the revenue records, whereas Shyam Lal, the seller was not at all the owner of the land. It was further alleged that the petitioner along with other co-accused personified and identified one Shyam Lal and got the sale deed registered. After investigation, charge-sheet was filed under Section 419, 420, 467, 468, 471 read with Section 120 (B) of Indian Penal Code against the petitioner and other co-accused. Thereafter, the Court below has framed the charges under the aforesaid sections against the petitioner along with other co-accused persons, which was subject of challenge before the revisional Court of Sessions Judge, Raigarh and the same was dismissed. Hence this petition.
3. Learned counsel for the petitioner would submit that there is no iota of evidence against the present petitioner and only on the basis of the fact that the petitioner was the witnesses in another sale deed, he has been inculpated in the instant case and therefore, the charges as framed are not supported by any evidence. He further submits that the

petitioner has also filed a criminal complaint case against the other co-accused before filing of the charge sheet and as such it would lead to show that the petitioner is innocent and he has been falsely implicated in this case, therefore, the applicant may be discharged.

4. Per contra learned State counsel opposes the same.
5. Perused the documents filed along with the petition. It is alleged that the petitioner along with the other co-accused in connivance with each other has executed the sale deed by one Shyam Lal though Shyam Lal was not the owner of the said property and actually the property belonged to one Ramlal. The documents filed along with the petition also contains the statement of Sachin Sinha and Narendra Choubey and perusal of their statement would reveal that while negotiation of the land was going on, the land was also shown by the petitioner along with other co-accused to identify the land at village-Gopalpur. In view of such facts it appears that the trial Court after going through the statement has framed the charges.
6. 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.”

7. 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)***.
8. 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 ?
9. 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.

10. 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.”

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