

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 429 of 2017

Mahendra Mishra, S/o. Ramnaresh Mishra, Aged About 22 Years, R/o. Village Kudeli, Police Station Jaitpur, District Sahdol, Madhya Pradesh.

---- Applicant

Versus

State Of Chhattisgarh, Through Police Station- City Kotwali Mungeli, District Mungeli, Chhattisgarh.

---- Respondent

For Applicant : Mr. F.S.Khare, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27.04.2017

Heard

1. This revision petition is against the framing of charge under Section 304 of IPC.
2. As per the prosecution case, the incident happened on 03.08.2016, the applicant who was the Driver of the Trailer bearing No.C.G. 10 C 9970 loaded the fly ash from the Power Plant, which was to be unloaded at Galvin Fly Ash Bricks Factory. The applicant being the Driver of the Trailer when he reached to the Galvin Fly Ash Bricks Factory with loaded fly ash, he wanted to unload the fly ash and some dispute occurred as the Chowkidar of the factory asked the applicant to unload the ash over a certain place, which he refused. Thereafter, when the applicant was at altercation with the Chowkidar, Chowkidar was called by the Supervisor, at that time, the applicant, all of a sudden, unloaded the hot fly ash by pulling the Hydraulic Jack of the Truck. By such act, the fly ash dust which was very hot came over the workers

working therein and few of them got severe burn injury and eventually four persons died.

3. Learned counsel for the applicant submits that there is no *mens rea* in this case that of applicant, therefore, the case under Section 304 of I.P.C. would not be made out and maximum the charges under Section 304-A can be attributed to the applicant. It is contended that as there was no intention to deliberately unload the fly ash over the victims and there was no dispute or enmity with the deceased, as such case would not be made out against the applicant. Therefore, the charge accordingly be amended.
4. Perused the documents and charge sheet which is filed alongwith the petition. The petition also contains the statement of the eye-witnesses. One of them is Mangli Bai who was a Labour and one Bhola Yadav was the Supervisor. Reading of the statement of Mangli Bai would show that initially when the applicant wanted to unload the fly ash near the mixture machine, it was opposed by Chowkidar Tek Singh and he was advised to unload at a particular place in the factory, which was refused by the applicant and the applicant became adamant to unload the fly ash on a particular place only. This led into altercation between the applicant and Chowkidar and when the Supervisor, all of a sudden, called the Chowkidar, the Driver at that moment pulled the Hydraulic Jack and the entire hot fly ash dust came over the workers who were working there and due to high temperature they suffered burn injury. The similar statement is also made by the Supervisor. Therefore, primarily, the statement of the witnesses suggest that despite the applicant was directed to unload the fly ash on a particular place, he refused and deliberately done the act whereby

hot fly ash fell over certain people and by such act of applicant, the victims suffered injury and eventually died.

5. The Supreme Court in a case of ***Shoraj Singh Ahlawat Vs. State of U.P.*** reported in ***AIR 2013 SC 52*** 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. 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.”

9. 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 applicant 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.

10. 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 revision petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok