

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 530 of 2017

Surfaraj Memon, S/o. Mohammad Rasid Memon, Aged About 36 Years,
R/o. Ward No. 7, Sadar Bazar, Champa, Police Station and Tahsil
Champa, District Janjgir- Champa, Chhattisgarh.

---- Applicant

Versus

The State Of Chhattisgarh, Through : Station House Officer, Champa,
District- Janjgir- Champa, Chhattisgarh.

---- Respondent

For Applicant : Mr. Ravindra Sharma, Advocate

For Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20.06.2017

Heard

1. This revision petition is against the framing of charges U/s. 364/34, 365/34, 323/34 (two times) of Indian Penal Code.
2. It is alleged that on 25.08.2016, the victim Jayant Das @ Rimpu was assaulted on the first day. Subsequently on the second day he was abducted and was assaulted and after he became unconscious, he was thrown into goods-train. The incident was reported by one Ishwar Yadav, friend of the victim. It is alleged that during such period of abduction, the victim was taken to the shop of the present applicant, wherein certain conversation also took place and thereafter, further incident happened.
3. Learned counsel for the applicant would submit that as per statement under Section 161 of Cr.P.C. of victim, the involvement of the present applicant is completely disowned by the victim himself as no allegations have been attributed against the present

applicant. It is further submitted that the offence was committed by the other co-accused persons and the present applicant has allowed the victim to go away and he insisted for the release of the victim, thereafter, the victim was released, consequently, no offence is made out against the present applicant. The counsel placed his reliance in *AIR 2010 SC 663* and would submit that when two views are possible and one of them give rise to suspicion only, which is distinguished from grave suspicion, the Court is empowered to discharge. The counsel also placed his reliance in *AIR 2013 SC (Supp.) 423* and *AIR 2013 SC (Supp.) 1056* and would submit that under the circumstances, no offence is made out against the applicant, therefore, the applicant may be discharged.

4. Learned State counsel opposes the argument advanced by the learned counsel for the applicant.
5. Perused the statement of the victim- Jayant Das @ Rimpu Mahant. Perusal of the statement of the victim would show that initially one of the co-accused has assaulted the victim on 25.08.2016, thereafter, again he was abducted on the next date. During such period of abduction, he was taken to the shop of the present applicant -Surfaraj Memon and in the shop of the applicant, conversation took place in between the applicant and victim. It is stated that applicant asked the victim why he had abused the applicant, thereafter, having denied, he was allowed to go and the applicant asked the other co-accused to release him. Thereafter, the co-accused took the victim to certain place and assaulted him and when victim became unconscious, thrown him into goods-train.

6. Considering the statement of the victim at this stage, presumption can not be drawn that the applicant was not in any way involved in this case. The statement under Section 161 of the victim would show that the other co-accused took the victim to the shop of the applicant and thereafter, the applicant had a conversation with the victim. It can be presumed and natural inference can be drawn that unless and until there had been a pre-conversation between applicant and other co-accused, the applicant would not have been taken to the shop. The statement would show that the applicant was very much present and had also conversation with the victim as to whether and why victim had abused the applicant or not? So presumption of innocence can not be drawn at this stage and the entire defence of the applicant could not be looked into and appreciated taking into stage of trial.
7. 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.”
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 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 ?
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. 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 v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage of framing of a 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 charge is not a stage, at which stage final test of guilt is to be applied.
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 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. 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