

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 416 of 201 6**

1. Sunil Kumar S/o Kishan Kumar Vibhar Aged About 26 Years R/o Pandri, District Raipur Chhattisgarh.
2. Milap Kumar S/o Mohan Lal Yadav Aged About 23 Years R/o Ninka, P.S. Dharsiwa, District Raipur Chhattisgarh.

---- Petitioners**Versus**

- State of Chhattisgarh Through The Station House Officer, P.S. Pandri, Raipur, Tahsil & District Raipur Chhattisgarh.

---- Respondent**&****CRR No. 417 of 201 6**

1. Harsh Gill S/o Bittu @ Khushpal Singh Aged About 20 Years R/o Devendra Nagar, House No. B/21, Sector-2, Devendra Nagar, Raipur, District Raipur Chhattisgarh.
2. Bittu Gill @ Khushpal Singh (Through In The Impugned Order Only Mentioned As Bittu Gill) S/o Avtar Singh Gill Aged About 53 Years R/o House No. B/21, Sector-2, Devendra Nagar, Raipur, District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh . Through The Station House Officer, P.S. Pandri, Raipur, Tahsil & District Raipur Chhattisgarh.
2. Abhay Nirmalkar S/o Suraj Nirmalkar, Aged About 22 Years R/o Mathpuraina, Raipur, District Raipur, Chhattisgarh.
3. Ajay Nirmalkar S/o Suraj Nirmalkar, Aged About 25 Years R/o Mathpuraina, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Ashish Surana, Advocate
For Respondent/State	:	Mr. Anupam Dubey, Dy.G.A.
For objectors	:	Mr. C.R. Sahu, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board**

3-4-2017

- 1) Since both the criminal revision petitions arise out of same impugned order dated 9-2-2016 passed in Sessions Trial No 223 of 2014, they are heard analogously and are being disposed of by this common order.
- 2) The applicants have preferred these revision petitions being aggrieved by the order dated 9-2-2016 passed by learned 9th Additional Sessions Judge Raipur, in S.T.No. 223 of 2014 whereby the learned Additional Sessions Judge has framed the charges against the applicants for offence punishable under Sections 294 (two counts), 506 Part-2 (two counts), 323 read with Section 34 and 307 read with Section 34 of the IPC.
- 3) As per prosecution case, on 3-10-2013 at about 7.30 present applicants abused the victim Ajay Nirmalkar and assaulted him with clubs and hands and fists whereby the victim sustained injuries on head, face, back and waist and thereby the aforesaid offence has been committed.
- 4) Learned counsel appearing for the applicants would submit that the offence under Section 307 of the IPC would not be made out. He would further submit that on the basis of false medical report, the applicants have been charged with under Section 307 of the IPC whereas the original report of initial medical examination of the victim would show that the case was not registered under Section 307 of the IPC. It is further submitted that due to political pressure, Section 307 of IPC was added which would be evident from the medical report as both the parties, i.e., the complainant and the accused persons sustained only simple injuries during scuffle. He would further submit that under the circumstances, charge framed under Section 307 of the IPC is completely without any substance of the fact on record, therefore, the order passed by the Court below suffers from material illegality and same deserves to be set aside.

- 5) *Per contra*, learned State counsel as well as counsel for the objector oppose the petition and the court below after evaluating the evidence has correctly passed the order.
- 6) I have heard learned counsel for the parties and have also perused the case diary and the documents.
- 7) Perused the statement of Ajhay Nirmalkar and Abhay Nirmalkar. According to the statement of Ajay Nirmalkar, when the quarrel started in between the applicants and the complainants, he was assaulted by way of clubs, hands and fists, and thereafter one of the accused persons was directed to take out the sword from the shop and while it was being taken out, after hearing the sound of police siren, they kept the sword inside. The medical report which is sought to be fabricated of Balaji Hospital would show that he was admitted in hospital from 30-10-2013 to 4-11-2013 and again he was admitted to hospital on 11-11-2013 as injuries were caused on his head and face. In view of such facts, it appears that the trial Court after going through the statement has framed the charges against the applicants.
- 8) 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 Page No.4 opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

9) 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).**

10) 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 ?

11) Therefore, considering the statement of the victim along with medical report, at this stage, it cannot be said that the medical report has been fabricated. It is for the trial Court to adjudicate the matter at the time of evidence. Therefore, reading the statements and the documents would

go to show that strong suspicion about existence of facts constituting offence is made out at this stage.

12) 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.”

- 13) 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.
- 14) in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage.
- 15) Accordingly, both the petitions being devoid of merit are liable to be and are hereby dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Raju