

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 488 of 2016**

1. Ramcharan Sahu S/o Lakhan Lal Sahu Aged About 54 Years Horticulture Development Officer, Marwahi, Distt. Bilaspur Chhattisgarh
2. Mahendra Kumar Jain S/o Sukh Lal Jain Aged About 50 Years Sub Engineer, Water Resources Department, Tilda Distt. Baloda Bazar - Bhatapara Chhattisgarh
3. Shailesh Chandra S/o Jiyala Chandra Aged About 41 Years Rural Agriculture Development Officer, Marwahi, Distt. Bilaspur Chhattisgarh R/o Purani Basti, Marwahi, Distt. Bilaspur Chhattisgarh
4. Umashankar Chandel S/o Hanshlal Chandel Aged About 48 Years Agriculture Development Officer, Marwahi, Distt. Bilaspur Chhattisgarh. R/o Sarkanda, District Bilaspur Chhattisgarh

---- Applicants**Versus**

- State Of Chhattisgarh Through The District Magistrate, Bilaspur Chhattisgarh

---- Non-applicant**And****Criminal Revision No. 489 Of 2016**

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---- Applicants**Vs**

- State Of Chhattisgarh Through The District Magistrate, Bilaspur Chhattisgarh

---- Non-applicant

For Applicants	Mr. P.K.C. Tiwari, Sr. Advocate along with Mr. K.G. Kela, Advocate
For respondent -State	Mr. Ashish Shukla, Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

02.01.2017

1. These two Criminal Revisions have been filed by the set of four similarly placed Applicants challenging the framing of charge under Sections 420 and 467 IPC and Section 7 of the Prevention of Corruption Act, 1988 passed by the Special Judge (P.C. Act), Bilaspur in Special Case No.245/2015 and 451/2015 respectively.
2. A brief fact of the prosecution is that report was received in respect of a large scale irregularities and defalcation being committed in the construction of earthen road and ponds under the drought relief scheme of the State Government. Based upon the said report Crime Nos. 213/2009 and 05/2010 were registered against the five of the persons. During the course of investigation a large scale defalcation and irregularities in releasing of the labour payment on the basis of forged and fake entries made in the muster rolls was detected and five persons were implicated in the said case. In due course of time charge sheet was filed before the Court of Special Judge (P.C. Act), Bilaspur in this regard. In due course of time vide the impugned order the Court below has framed charges against the Applicants for the offence under Sections 420 and 467 of the IPC and also under Section 7 of the P.C. Act. It is this framing of charge which has been assailed by the

Applicants through the present Revision Petitions. It is also pertinent to mention that in the meanwhile the appropriate authority had also granted sanction for prosecution against the present Applicants under Section 197 Cr.P.C.

3. Learned Sr. Counsel Sh. P.K. C. Tiwari appearing for the Petitioner in both the Petitions submitted that the limited argument he intends to put for the purpose of questioning framing of charge is that though the charges leveled against the Petitioners are of embezzlement of the Government funds in the execution of works pertaining to the construction of the road, pond under the drought relief work/scheme of the State Government, but the Petitioners are not the officers responsible for the execution of the said works undertaken under the drought relief fund. According to Sh. Tiwari the sole powers which were entrusted upon the Petitioners No. 1, 2 and 3 were that of disbursing officers. According to Sh. Tiwari the execution of works were entrusted with other agencies and officers and that the Petitioners are therefore not directly responsible for embezzlement if any.
4. Shri Tiwari, Sr. Counsel appearing for the Petitioners further vehemently also argued that the Petitioner No.4 in fact was not assigned any disbursing power and that he has not been entrusted or has discharged any other official duties in the alleged construction works which were carried out. Therefore the criminal prosecution initiated against the Petitioner No. 4 per se is illegal and not sustainable. According to Shri Tiwari, senior Counsel Petitioner No. 4 had only accompanied Petitioner No.3 at the site where the work was being executed under drought relief works/scheme and therefore only because he happens to have accompanied the Petitioner No.3 he could not have been implicated in the criminal case for no fault of his unless there is cogent,

proper and admissible piece of evidence. Thus the framing of charge against Petitioner No.4 particularly is not sustainable and deserves to be set aside / quashed. According to the Senior Counsel as the disbursing officer are fully duty bound for release of the payment on the basis of the vouchers and the bills and the statement of account which are prepared at the execution stage in which the Petitioners do not have much role to play. According to Sr. Tiwari the role of disbursing officer being very limited and who are bound to perform their duties when the records are placed before them for disbursement thus all the Petitioners have been falsely implicated. Thus, the Senior Counsel prayed for holding that no charges whatsoever is made out from the given piece of evidence and from the averments and contention put forth by the prosecution in respect of each of the Petitioners are concerned particularly against Petitioner No.4. In view of the submissions made, learned senior Counsel prays for allowing the petition and quashing of the entire criminal prosecution and the framing of charge at least that of Petitioner No.4.

5. Learned State Counsel on the contrary opposing the Petition submits that it is a case where charges have been framed based upon the available materials in the charge sheet and that this by itself can not be said to be detrimental to the interest of the Petitioners seeking for quashment of the entire criminal prosecution at this juncture. According to the State Counsel in exercise of its powers under Section 482 of the Cr.P.C. the High Court would not conduct a roving inquiry or for that matter a mini trial to reach to the conclusion whether there are sufficient materials available against the accused persons or not.
6. According to the State Counsel under Section 482 of the Cr.P.C. all that the Court would look into is, whether there is prima facie material

available against the petitioners or not. In case if there are prima facie some material available then the Court cannot be said to have committed error of law while framing of charge against the Petitioners.

7. Answering on the issue of merits of the case learned State Counsel submits that it is the case where the entire embezzlement has transpired at the hands of the Petitioners as they had received the money under the drought relief fund for being released in the course of execution of the works assigned under the drought relief work. The State Counsel further submitted that it is a case where the fake and forged names entered in the vouchers were used for the release of labour payments embezzling amount of about 7.4 lakh rupees.
8. According to the State Counsel in all there were 8 accused persons and the charge-sheet in the instant case were filed as early as on 18.09.2011. The State Counsel further submitted that during the course of investigation the names of the petitioners have reflected and that all the witnesses who were examined in the course of investigation stated that the entire money in fact had been initially received by the Petitioners and thereafter the amount has been shown to have been disbursed on the basis of fake and fabricated muster rolls.
9. According to the State Counsel these Petitioners are also responsible for release of the payment and without their knowledge, connivance and consent the payment could not have been released. The persons who have not worked under the said scheme their names have been entered for the purpose of collecting money. In the light of the statements collected during the course of investigation and nature of the offence, the State Counsel prayed for rejection of the Petition.
10. Having considered the rival contentions put forth on either side and on perusal of record what primarily attracts the mind of the Court is the fact

that in respect of the embezzlement committed in the course of the execution of the drought relief work and the said embezzlement is to the tune of Rs. 7.4 lakhs. So far as when the Petitioners being involved in the said case or not is matter of evidence which can not be looked into or decided at this preliminary stage nor can Petitioners be granted an order of acquittal only on the basis of records which have been produced. According to this Court at the time of framing of charge all that the Court below has to look into is whether there is any prima facie material available against the petitioners in the record so that the charge could have been framed.

11. Perusal of the record would show that the police authorities during the course of investigation had recorded certain statements a couple of which are that of Narayan Prasad who was Panch of one of the ward in addition the statement of Daulat Lal both of whom have named the Petitioners in the course of committing the embezzlement and that in the said factual matrix of the case it can not be said that there was no substance or material against the Petitioners herein.
12. The Supreme Court has time and again repeatedly held that the at the time of framing of charge the Courts need not look for sufficient material for proceeding, rather if there is some material available, framing of charge then would be justified. It has also been reiterated by the Supreme Court in more than a couple of decisions that the even if there are strong suspicion in the mind of the Court it would be justified in framing of charge.
13. The Supreme Court in case of **Amit Kapoor Vs. Ramesh Chander and Another** reported in **(2012) 9 SCC 460** has clearly laid down the principle that inherent as well as revision jurisdiction should be exercised cautiously. If the jurisdiction under the Code in relation to

quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. At the initial stage of framing of a charge, the Court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

14. In the case of **N. Soundaram Vs. P. K. Pounraj and Another**, reported in **(2014) 10 SCC 616** the Supreme Court in paragraph 13 has categorically held that:

“13. .It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegation and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

15. Again in the case of **Vinod Raghuvanshi Vs. Ajay Arora and Others** reported in **(2013) 10 SCC 581** the Supreme Court has held :

“It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the

court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.”

16. In the light of the aforesaid judicial pronouncements of the Supreme Court in this regard also the fact that during the investigation particularly the statement of Narayan Prasad and Daulat Lal it can not be said that it is the case of no evidence against the petitioners but there are some material available on the basis of which if charge is framed the same can not be said to be bad in law or illegal in any manner. The impugned order therefore does not warrant any interference.
17. The Revision Petitions being bereft of merits, the same deserves to be and are accordingly rejected.

Sd/-

**(P. Sam Koshy)
JUDGE**