

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 935 of 2015**

Shamim Akhtar S/o Late Mohd. Jahiruddin Aged About 54 Years R/o Nanda Chowk, Sarangarh, At Present R/o At In Front Of Jutemill Masjid, Raigarh, District Raigarh Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through District Magistrate, Raigarh, District Raigarh Chhattisgarh.

---- Respondent

 For Petitioner : Mr. Ashish Gupta, Advocate.
 For Respondent/State : Mr. Ramakant Pandey, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****21/11/2017**

1. The instant petition is against the order dated 15.07.2015 passed in Criminal Revision No.202200000502015 by the Fifth Additional Sessions Judge, Raigarh, whereby the order dated 02.02.2015 passed in Criminal Case No.949/2014 by the Chief Judicial Magistrate, Raigarh, was affirmed. The issue pertains to framing of the charge.
2. Learned counsel for the petitioner submits that the charge under the Section cannot be made out as the person is dead because of the reverse current according to the case of the prosecution and therefore, it is not a case that the person while was working in the electric line, the line was made live by switching on.
3. Reading of the order and documents attached with the petition would show that one Vikas Bhardwaj was directed to climb on the electric line and the present petitioner was sent to switch on the line, thereafter, Vikas Bhardwaj

climbed into the pole and Vikas was repairing the electric line, the electricity was resumed whereby he fell down from the pole and died. The order records that Vikas was a trainee and despite the other trained persons were present he was made to climb into the line and the petitioner alongwith co-accused did not adhered to the safety rules whereby because of such negligence Vikas sustained the electric shock, he fell down and died.

4. The Supreme Court in the case law reported in ***AIR 2013 SC 52 (Shoraj Singh Ahlawat and Ors. Vs. State of U.P. and Anr.)*** has held that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge 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, 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 and Ors. Vs. State (NCT of Delhi) and Anr. (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 “ 2008 AIR SCW 96)***.
5. Therefore, considering the documents placed alongwith the petition, it can not be substantially held that no prima-facie case is made out against the petitioner.
6. Therefore, taking into account the argument, which has been advanced by the learned counsel for the petitioner, can not be accepted as the Court has to see only prima-facie where there is ground to presume that the accused had committed the offence or not.

7. Reading the contents of FIR and the statement collected by the prosecution 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.
8. 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. It is made clear that the Court has not expressed any opinion on merits about admissibility or to draw inference of any accusation and interpretation of statement or evidence.

Sd/-
(Goutam Bhaduri)
JUDGE