

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1081 of 2015

Chandra Kumar Jethwani, S/o. Nandlal Jethwani, Aged About 42 Years, R/o. Chhabra Lodge, Gali Lal Bagicha, Ward Dhamatari, P.S. Dhamtari, Tahsil Dhamtari, Civil & Rev. Distt. Dhamtari, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : Station House Officer, P.S. Arjuni, Distt. Dhamtari, Chhattisgarh.
2. Shatrughan Mishra, S/o. Lallan Prasad Mishra, Aged About 48 Years, R/o. Vivekanand Colony, Dhamtari, Distt. -Dhamtari, Chhattisgarh.

-----Respondents

For Petitioner : Mr. Sunil Otwani, Advocate

For Respondent No.1/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

26/07/2017

Heard.

1. Counsel for the petitioner submits that petitioner is a rice miller, who has purchased 1720 quintals of paddy from the complainant -Satrughan Mishra worth Rs.24,30,250/-. Complainant has lodged one FIR against the petitioner alleging that on his demand for unpaid price from the petitioner, petitioner is denying the purchase and has refused for payment of the amount, which amounts to offence of cheating. Offence under Section 406 of I.P.C. has been registered by P.S. - Arjuni, District – Dhamtari. After filing of the charge-sheet, Court below has taken cognizance for trial of offence U/s. 420, 406 of Indian Penal Code.

2. Petitioner and complainant entered into a compromise on the basis of which an application was moved before the trial Court for compounding of offence on 31.07.2015. Application has been rejected by the trial Court observing that the charges have not been framed and some investigation regarding the report of hand writing expert is pending. Hence for these reasons, permission to compound was not granted. Hence this petition.
3. The counsel for the State has opposed the grounds in this petition and arguments submitted in this behalf.
4. Perused the documents and the material on record.
5. From the documents on record, it is apparent that the proposed offence for trial against the petitioner are under Section 406 and 420 of I.P.C.. Both these offences are compoundable with permission of the Court under Section 320 of Cr.P.C. It is true that Court has jurisdiction either to grant permission or to refuse permission to compound. At the first instance, the trial Court has opted to refuse permission mentioning the grounds that charge has not been framed and some investigation is pending. Grounds mentioned in the impugned order do not seem to be correct grounds for refusal of the prayer made by the petitioner as the charge sheet has been filed and there is no request from the prosecution to wait for the report of pending investigation, in that case, the Court can consider on framing of charges. On the other hand, when an application is moved for compromise, trial Court can go through the record and make an observation and give a finding as to what are the offences made out and on that basis, the Court may allow the application for permission to compound offence or may reject. If the Court comes to a conclusion that there is a prima-facie finding that

some non-compoundable offence is made out for framing of charge.

6. Accordingly, this petition is allowed at the motion stage. The impugned order of the trial Court dated 31.07.2015, passed in Criminal Case No. 606/2015, pending before the Court of C.J.M., Dhamtari is hereby set-aside. It is directed that trial Court shall reconsider the application made by the petitioner and complainant for grant of permission to compromise in accordance with law and pass suitable order.
7. Petitioner shall be at liberty to approach this Court in case he feels aggrieved from order passed by the trial Court.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram