

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1489 of 2017**

1. Gopal Sahu S/o Hira Singh, Aged About 29 Years R/o Village Torala, Police Station - Gobara Navapara, Tahsil Abhanpur, District Raipur Chhattisgarh.
2. Daniram Sahu S/o Jagdish Ram Sahu Aged About 57 Years R/o Village And Post Kathiya, Tahsil Abhanpur , District Raipur Chhattisgarh.(Owner Of Tractor Having Registration

---- Petitioners**Versus**

1. Siyaram Barele S/o Sunder Barele Aged About 32 Years R/o Village Tuta, Police Station And Tahsil Abhanpur, District Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through District Magistrate Raipur District Raipur Chhattisgarh.

---- Respondents

For petitioners- Shri Jitendra Gupta, Advocate.
For State- Shri Neeraj Sharma, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order****01/11/2017**

Heard.

1. Instant petition is for quashment of the charge framed under Section 279, 337, 304-A and 435 of IPC against the petitioners by learned JMFC, Raipur in a complaint case No.410/2010.
2. On a complaint filed by Siyaram Barele who is the owner of the bus as the facts were narrated on 16/02/2009 bus bearing No. CG 04 ZA 0535 was going from Champaran to Raipur while it reached near village Dhanaud rest house and the passengers were alighting from the bus, at that time the tractor bearing No. CG 04 DA 2644 which was being driven by the petitioner No.1 Gopal Sahu in a rash and negligent manner dashed it at the back whereby the trolley which was attached to the tractor turned turtle and two of the persons who were travelling in trolley died. The

tractor was driven by the Gopal Sahu petitioner No.1 and was owned by Daniram Sahu petitioner No.2. FIR was lodged on 16/02/2009 at Abhanpur and after investigation charge sheet was filed before the JMFC, Raipur. Initially no charge sheet was filed against Gopal Sahu and Daniram Sahu the petitioners. Therefore, being aggrieved by such complaint was filed by respondent Siyaram Barele who is the owner of the bus. Subsequently, statement of Punaram Bharti, Mohandas Markande and Rajendra was recorded before the court and court after evaluating the prima facie evidence framed charges under sections 279, 337, 304-A & 435 IPC against the petitioner No.1 and in respect of petitioner No.2 charge under section 435 IPC was framed.

3. Learned counsel for the petitioners would submit that charge so framed is without any evidence as initially while charge sheet was filed petitioners were exonerated and false allegations have been made against these petitioners by way of complaint as such they are required to be discharged from the sections. He further submits that different litigation also took place before the claims tribunal and the earlier persons who were charge sheeted namely Bedram Sahu, Awadhram Sahu and Dinesh Kumar Sahni were acquitted on 27/08/2016, therefore no offence has been committed by the petitioners, they are required to be discharged.

4. Learned State counsel opposes the same.

5. Perusal of the record would show that complaint was registered after evaluating all the evidence before charge of Siyaram, Punaram Bharti, Rajendra Suryavanshi and they have stated that at the relevant time tractor which collided with the stationery bus was being driven by the petitioner No.1 Gopal Sahu in a rash and negligent manner and at that time petitioner No.2 Daniram Sahu owner was not present. Subsequently, he joined the place of incident and set ablaze the bus on fire alongwith

petitioner No.1. Therefore, while initial charge was framed it was amended by the revisional court and Daniram Sahu was acquitted of the charges under Sections 279, 337 & 304-A of IPC, however charge framed under section 435 IPC for setting ablaze the bus was affirmed. Further in respect of the petitioner No.1 Gopal Sahu who was driving the vehicle against him offence under sections 279, 337, 304-A and 435 of IPC was maintained.

6. 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 opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

7. 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).

8. 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 ?

9. 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.”

10. 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 Vs. Fatehkaran Mehdu**, reported in **AIR 2017 SC 796**. It is stated that at the stage of framing of 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.

11. Applying the aforesaid principles in this case, after going through the documents, defence adduced by the petitioner cannot be accepted as gospel truth and he will be at liberty to confront the witnesses with the necessary documents at the stage of evidence when the witnesses are cross-examined.

12. 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.

Sd/-

(Goutam Bhaduri)

JUDGE