

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 18/09/2017

Order Passed on : 11/10/2017

CR.R. No. 1081 of 2016

Ankit Malhotra, S/o. Shri Inder Mohan Malhotra, Aged About 23 Years, R/o. Near Sehgal Nursing Home, Police Station Civil Lines, Bilaspur, Civil & Revenue District- Bilaspur, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station - Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

CR.R. No. 266 of 2017

Karan Jaiswal, S/o. Shri Gopal Krishna Jaiswal, Aged About 24 Years, R/o. Opposite Shivam Motors, Tifra, Police Station Sirgitti, Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station - Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

CR.R. No. 271 Of 2017

Karan Khushalani, S/o. Shri Pratap Khushalani, Aged About 27 Years, R/o. Pratap Bhawan Jabrapara, Police Station- Sarkanda, Bilaspur, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through : Police Station : Civil Lines, Bilaspur, District -Bilaspur, Chhattisgarh.

---- Respondent

And

CR.R. No. 58 Of 2017

Kinshuk Agrawal, S/o. Om Prakash Agrawal, Aged About 27 Years, R/o. Mahamaya Vihar, Wayer House Road, Police Station Civil Lines, Bilaspur Civil and Revenue District- Bilaspur Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh, Through : Police Station - Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondent

For Petitioners	: Mr. Kishore Bhaduri, Mr. R.S. Marhas, Mr. Sunil Otvani, Mr. Manoj Paranjpe, Mr. Shakti Raj Sinha, Advocates for the respective petitioners.
For Respondent/State	: Mr. Ashish Shukla, Govt. Advocate
For Objector	: Mr. Manish Sharma, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

11/10/2017

1. All the criminal revision petitions are heard together and decided by this common order, as they all are arising out of one sessions trial and as the facts and issues involved are similar in nature.
2. These revision petitions have been filed against the impugned order of framing of charge against the petitioners in all the cases dated 05.11.2016, in S.T. No.149/2016, by the 5th Additional Sessions Judge, Bilaspur, with prayer for discharge of all the petitioners/accused persons.

3. Mr. Kishore Bhaduri, learned counsel appearing on behalf of the petitioner in Criminal Revision No.266/2017 submits that the deceased was friend of the accused persons. On the intervening night of the 21-22/07/2016, a party was organized by one Kabir Arora in TDS Bar situated in Magneto Mall, Bilaspur, in which all the petitioners, deceased – Gaurang Bobde and others friends Kabir Arora, Aditya Arora and Sandeep Mohanti participated. After enjoying party, at about 2.50 am, petitioners accompanied with deceased- Gaurang Bobde came out from the TDS Bar and headed for the lift, as lift was not available in the same floor, all the petitioners accompanied with the deceased headed towards the staircase. It is submitted that the deceased Gaurang Bobde was in inebriated condition while descending through the staircase, he could not maintain his balance and fell down from the staircase to the ground floor suffering grievous injuries on various part of his body, which resulted in his death.
4. It is submitted that the case of death of deceased -Gaurang Bobade had been purely accidental and petitioners had no role to play in this incident. Morgue intimation was registered, without there being any iota of evidence, final charge-sheet was prepared by the investigation officer mentioning in it, that deceased was in inebriated condition in company of the accused persons in inadvertently and knowing well that it may be dangerous for the deceased proceeded towards the staircase ignoring the beckoning and call of the lift man Pushpendra Singh. Further petitioner – Ankit Malhotra, was seen pulling forcefully the deceased towards railing of the staircase and

he allowed him to fall down. The rest of the petitioners/accused persons shared the intention of the accused Ankit Malhotra in this incident and after fall and death of deceased, all the petitioners/accused persons fled away from the spot on the first opportunity without taking care of the deceased.

5. It is further submitted by Mr. Bhaduri that FIR was lodged by belatedly on 25.07.2016 mentioning the same facts as narrated above. As per the spot inspection report, which has been opined by the Senior Scientific Officer, Scene of Crime Mobile Unit, Bilaspur that the deceased get unbalanced and fell down from the staircase because of which he suffered injuries and died. Postmortem report of the deceased does not disclose as to in what manner the deceased sustained injuries. It has been simply opined by the Autopsy Surgeon that death resulted due to coma which was caused due to head injuries associated with excessive internal hemorrhage due to rupture of liver. No opinion was given that any of the injuries were caused by any object of whatsoever description.
6. The case of the prosecution is based only on the analysis of CCTV footage recorded at the time of incident shows four persons descending from staircase and fifth person following them getting unbalanced and falling down on the side of the railing of the staircase. It is submitted that on viewing this CCTV footage, it is amply clear that the accused persons in this case has no role to play because deceased himself got unbalanced and fell down from the staircase.

7. Mr. Bhaduri further submits that the statement of the witnesses also do not disclose anything, which can be attributed on the part of the petitioners/accused persons for holding them responsible for the death of the deceased. Witnesses Shri Rang Champat Rao Bobde, Smt. Bharti Bobde are parents and Ku. Vedanti Bobde is sister of the deceased, who were not present at the time of death of the deceased. Witness Pushpendra Singh Thakur, lift operator has stated that he saw the petitioners and the deceased coming out of TDS Bar and proceeding towards the lift, but not finding the lift on that floor, they proceeded towards the staircase without heeding to request made by the witness that lift is arriving shortly, thereafter he came to know about the incident. Witness Arnold Maseeh saw the deceased lying on the floor of the parking area, then he saw petitioner – Kinshuk Agrawal and Ankit Malhotra, descending from the stairs. He inquired from them whether any of their companion has fallen down to which they replied in negative and went away from the spot. He has further stated that he approached petitioner – Kinshuk Agrawal and Ankit Malhotra, who stated that person fallen down was their friend, but they refused to extend any help to take the injured deceased to the hospital and they also went away from the spot. Witness – Venkat Panigrahi, Dilharan Tandon, Sanjay Chauhan, Amit Sharma, Sonu Gond, Kamlesh Kumar Khudisha, Ravi Sonari, have stated similarly, which shows that according to these witnesses, the petitioners/accused persons had nothing to do with the death of the deceased. Other witnesses have also stated similarly. Witness Dilip Singh Thakur is not an eye-witness, he has stated on the basis of CCTV footage and his statement is clearly

just in opposition to what is visible on viewing the CCTV footage.

8. It is submitted that the learned trial Court has erroneously framed charges against the petitioners/accused persons for offence under Section 302/34 and in the alternative Section 304 read with Section 34 of the Indian Penal Code and Section 201/34 of Indian Penal Code. It is prayed that the order framing charge against the petitioners be set-aside and the petitioners be discharged.
9. Mr. R.S. Marhas, counsel for the petitioner in Cr.R. No.58 of 2017 adopted the arguments placed before the Court by Mr. Kishore Bhaduri and has submitted that there is no iota of evidence so as to even hold that any prima-facie case is made out, hence the petitioner and other co-accused persons are entitled for discharge.
10. Mr. Sunil Otwani, counsel for the petitioner in Cr.R. No.271 of 2017 also adopted the arguments made by Mr. Bhaduri and would submit that none of the witnesses have witnessed any overt act. Secondly no mens rea can be made out from the details given about the incident as the deceased and his friends, the accused persons were partying at the night of the incident and the witness present in the TDS Bar have clearly stated that no quarrel or any dispute took place between the deceased or any of the accused persons. The counsel has placed reliance in the judgment passed by the Hon'ble Supreme Court in case of ***Shankar Narayan Bhadolkar Vs. State of Maharashtra***, reported in ***(2005) 9 SCC 71***, in case of ***Nankaunoo Vs. State of U.P.***, reported in ***(2016) 3 SCC 317***.

11. Mr. Manoj Paranjpe, counsel for the petitioner in Cr.R. No.1081 of 2016, submits that on going through the statement of all the witnesses cited by prosecution, there is no statement that any scuffle or assault took place between the deceased and the accused persons. Reliance has been placed on the judgment passed in case of ***Nankaunoo Vs. State of U.P.***, reported in **(2016) 3 SCC 317**, and in case of ***Dilawar Balu Kurane Vs. State of Maharashtra***, reported in **(2002) 2 SCC 135**, in case of ***Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra***, reported in **(2008) 10 SCC 394**, in case of ***M.C. Abraham & Anr. Vs. State of Maharashtra***, reported in **(2003) 2 SCC 649**, in case of ***State of Maharashtra and Ors. Vs. Som Nath Thapa & Ors.***, reported in **(1996) 4 SCC 659**.
12. Counsel for the State/respondent submits that charges have been framed by the trial Court in alternative as there are statement of the witnesses, which disclosed that either death of deceased has been caused or death of the deceased resulted due to inadvertent act or omission of the petitioners/accused persons. It is submitted that the arguments on behalf of the petitioners advanced concerning the CCTV footage is under the analysis by the forensic laboratory and report of the concerned CCTV footage is still awaited, hence, the CCTV footage, which is being relied upon by the accused/persons can not be accepted as conclusive evidence.
13. Counsel for the State further submits that case of the prosecution is supported with circumstantial evidence of the deceased being last seen together with the accused persons, the statement of the

witnesses about inadvertent act of the accused persons by proceeding towards the staircase, when the deceased was not in a condition to maintain his balance and the most important circumstances is conduct of the accused persons soon after the incident, which has been witnessed by the witnesses examined by the investigation officer. It is submitted by the counsel for the State that this is a case, in which what conspired at the time of the accident and what was the reason which resulted in death of the deceased was in specific knowledge of the petitioners/accused persons, in such case Section 106 of Evidence Act is applicable. Reliance has been placed on the judgment of Supreme Court in case of ***State of M.P. Vs. S.B. Johari and Ors.***, reported in **AIR 2000 Supreme Court 665**, in case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra***, reported in **2006 AIR SCW 5300**.

14. Mr. Manish Sharma, counsel appearing on behalf of the Objector adopted the arguments advanced by the counsel for the State and placed reliance on the judgment of Hon'ble Supreme Court in case of ***State of Rajasthan Vs. Fatehkaran Mehdu***, reported in **(2017) 3 SCC 198**, in case of ***Dinesh Tiwari Vs. State of U.P. & Anr.*** reported in **(2014) 13 Supreme Court Cases 137**. It is submitted that as per the material against the petitioners/accused persons, burden has shifted towards the accused persons to disprove the case of the prosecution.
15. In reply, Mr. Kishore Bhaduri, counsel for the petitioner submits that medical report is clearly suggestive that injuries caused to the deceased were due to fall from height. He placed reliance on the

judgment of Hon'ble Supreme Court in case of ***Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors.***, reported in ***(2013) 5 Supreme Court Cases 762***.

16. Mr. Sunil Otwani, counsel for the petitioner in Cr.R. No.271/2017 submits in reply that perusal of the statements on record, it is very clearly demonstrated that petitioners/accused persons have no motive to cause death of the deceased. It is submitted that Section 106 of Evidence Act is not applicable in this case as prosecution has to prove that accused persons had specific knowledge, which is not disclosed from the statement of the witnesses on record. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***Vikramjit Singh @ Vicky Vs. State of Punjab*** reported in ***2007 Cr.L.J. 1000 (SC)***.
17. I have heard the learned counsel for the parties at length and perused all the documents placed on record.
18. Principle is settled that at the stage of framing charges meticulous evaluation of statement of witnesses is uncalled for. The only requirement is that the material on record at its face value suggests the commission of offence by the accused persons arrayed in the case that would be sufficient for framing of charge against the petitioners/accused persons. The arguments raised by the counsel for the State that Section 106 of Evidence Act is applicable in this case is arguable. The Hon'ble Supreme Court in case of *State of Rajasthan Vs. Fatehkaran Mehdu*, reported in (2017) 3 SCC 198, in para – 28 and 29 has held as under :-

“28. It is useful to refer to judgment of this Court in Amit Kapoor Vs. Ramesh Chander, where scope of [Section 397](#) Cr.P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

“12. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.”

“13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with

law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the [CrPC](#).”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under [Section 397](#) particularly in context of quashing of charge framed under [Section 228](#) Cr. P. C. Para 27, 27.1, 27.2, 27.3, 27.9 and 2.13 are extracted as follows:

"27. Having discussed the scope of jurisdiction under these two provisions, i.e., [Section 397](#) and [Section 482](#) of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under [Section 397](#) or [Section 482](#) of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under [Section 482](#) of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of [Section 228](#) of the Code should be exercised very sparingly

and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

19. The arguments in all the cases have been advanced on the basis of the material placed in this revision petition with main emphasis on the evidence of CCTV footage and the copy of that CCTV footage is also attached as one of the documents. On viewing this CCTV footage, things do not seem to be very clear and identifiable, of course it would be dependent upon the statement of the witnesses to identify the persons in CCTV footage and explain the happening by playing the CCTV footage in Court.
20. One of the witness Dilip Singh Thakur though not a eyewitness, is operator of CCTV camera in the premises of Magneto Mall, Bilaspur has given statement under Section 161 of Cr.P.C. that on examining all the CCTV footage, he found one accused persons namely Ankit Malhotra pulling and letting the deceased fall from the staircase and the co-accused persons watching the fall of the deceased from the staircase. This statement of the witness is true or false has to be examined in the trial itself on the strength of the question put to him in cross-examination by the defence counsel. Further the statement of the counsel for the State that the CCTV footage is still under analysis by the forensic department and report is yet to arrive is another factor, which has to be taken into consideration. The undeniable circumstances in this case are that the deceased was in company of the petitioner/accused persons in TDS Bar in Magneto Mal, situated in one of the upper floor in the Mall coupled with other circumstances as mentioned in proceeding paragraphs.

21. The Hon'ble Supreme Court in case of ***Amit Kapoor Vs. Ramesh Chander & Anr.***, reported in ***2012 (9) SCC 460***, in para -16 & 17 has held as under :-

“16. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under [Section 482](#) of 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.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of [Section 228](#) of the Code, unless the accused is discharged under [Section 227](#) of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of [Sections 227](#) and [228](#) of the Code. [Section 227](#) is expression of a definite opinion and judgment of the Court while [Section 228](#) is tentative. Thus, to say that at

the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of [Section 228](#) of the Code.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.”

22. Although there is no direct witness to the incident in this case, but the evidence as collected in the investigation is enough to draw prima-facie conclusion for framing of charge against the accused persons.
23. Under these circumstances, no infirmity is found with the impugned order, hence on the basis of the reasons as aforementioned all the criminal revision against the orders framing charge by the trial Court have no merit and are dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge