

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 23/08/2017

Order Passed on : 15/09/2017

CR.M.P. No. 573 of 2017

Alok Kumar Agrawal, S/o. Shri Radhe Shyam Agrawal, Aged About 46 Years, Posted As Assistant Engineer (U/s) At Office of the Chief Engineer, Mahanadi Project, Water Resources Department, Raipur. R/o. Parijat Extension, in front of Tejaswani Girls Hostel, Nehru Nagar, Bilaspur, Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh, Through : Superintendent Of Police, State Economic Offences Wing Raipur, Chhattisgarh.

---- Respondent

AND

CR.M.P. No.571 of 2017

Alka Agrawal, W/o. Alok Kumar Agrawal, Aged About 40 Years, R/o. Opposite Tejaswani Girls Hostel, Parijat Extension, Nehru Nagar, Bilaspur, District- Bilaspur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through : Superintendent of Police, State Economic Offences Wing Raipur, Chhattisgarh.

---- Respondent

For Petitioners	: Mr. K.M. Ansari, Sr. Advocate with Mr. Gagan Tiwari, Advocate
For Respondent/State	: Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

15/09/2017

1. Both the petitions are heard together and decided by this common order, as the facts and issues involved are similar in nature.
2. These petitions under Section 482 of Cr.P.C. have been brought with prayer to set-aside the order of framing of charge dated 07.10.2016 and 20.10.2016 against the petitioners respectively, passed by the learned Special Judge (Prevention of Corruption), Bilaspur (C.G.) and to direct the learned trial Court to frame charges afresh in accordance with law.
3. It is submitted by the learned counsel for the petitioners in both the cases that consequent to the charge-sheet filed against both the petitioners, the trial Court has framed charges against petitioner – Alok Kumar Agrawal under Section 13 (1) (e), 13(2) of Prevention of Corruption Act and Section 420, 467, 468, 471 and 120-B of Indian Penal Code and against the petitioner- Alka Agrawal under Section 12 of the Prevention of Corruption Act and Section 109 and 120-B of the Indian Penal Code.
4. It is submitted by the learned counsel for the petitioners that charge-sheet filed against the petitioners in both the cases had contained the documents of 16000 pages. Copies of all the documents have not been received by the petitioners. It is submitted that before framing charge, the trial Court was required to peruse all the documents submitted along with the charge-sheet, which has not been done in this case. It is demonstrated from the order of the

Court itself. The order sheet dated 16.05.2016 of the trial Court, mentions that on request made by the counsel for the petitioners/accused persons, the documents were kept in box and sealed on the same day. The charges against the petitioner -Alok Kumar Agrawal was framed on 07.10.2016 and against petitioner-Alka Agrawal was framed on 20.10.2016. The order sheet recorded on these dates have not disclosed the opening of sealed boxes containing the documents. Petitioners in both the cases denied the charges and submitted their objections that they do not have knowledge of all the documents attached with the charge-sheet. The order dated dated 09.01.2017 mentions that sealed box containing the documents were opened on this date, thus it is apparently clear, that trial Court has perused all the documents and framed the charges, is erroneous statement in the order sheet. Reference has been made to the order sheet dated 27.06.2017, in which the application filed by the petitioners for providing them fresh and legible copies of documents was decided and allowed and prosecution was ordered to provide all the copies to the petitioners/accused persons. In order sheet dated 01.07.2017, the Court has recorded in the order-sheet about the documents not received by the petitioner/accused persons and the prosecution was directed to provide all the documents. Similar order sheets have been recorded on later dates.

5. It is further submitted by the learned counsel for the petitioners that check period has been wrongly mentioned in the documents of charge-sheet. The actual check period should have been between

2004 to 2016. Hence, prayed that petitions be allowed and relief be granted as prayed for.

6. In reply, counsel for the respondent/State has denied all the grounds raised in these petitions and opposed the submissions made. It is submitted that provisions of Section 207 of Criminal Procedure was complied with and accused persons have received all the documents. Further by the orders of the trial Court, the petitioners/accused persons have been provided with fresh and legible copies of the documents of the charge-sheet. It is also submitted that petitioners/accused persons had the remedy to approach the Sessions Court in revisional Jurisdiction and after exhaustion of the period of limitation for revision, these petitions under Section 482 of Cr.P.C. have been purposely filed before this Court. Hence, both the petitions filed are not maintainable. It is further submitted that Section 464 of Criminal Procedure Code makes it clear that any error or omission of framing of charge by itself shall not invalidate the proceeding in a case. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***Hamida Vs. Rashid @ Rasheed & Ors.*** reported in **(2008) 1 Supreme Court Cases 474**, in which it has been held that inherent jurisdiction under Section 482 of Cr.P.C. can be exercised by the High Court sparingly with circumspection and in rare cases and that too, to correct patent illegalities or when some miscarriage of justice is done. Reliance has also been placed on the judgment of Supreme Court in case of ***Radhey Shyam Vs. Kunj Bihari & Ors.*** reported in **1989 Supp (2) Supreme Court Cases 572**, in which it

has been held that on framing of charge meticulous consideration of evidence and appreciation of documents and statement is not required and neither justified.

7. In reply to the arguments submitted by the State, counsel for the petitioners submits that they have not come before this Court for discharge, they have come only for direction that the trial Court should frame charges afresh in accordance with the law. The counsel has relied on the judgment of Allahabad High Court in case of **Raj Kumar Chaudhary Vs. State of U.P.**, reported in **Criminal Law Journal (NOC 199) 57**, judgment of Andhra Pradesh High Court in case of **B. Gunasekhar Babu Vs. State of Andhra Pradesh**, reported in **2017 SCC Online Hyderabad 35**. The judgment of Karnataka High Court in case of **Smt. Jumadevi & Another Vs. State of Karnataka**, reported in **ILR 2013 Karnataka 4471**, judgment of Patna High Court in case of **Shri Babban Prasad Singh & Ors. Vs. The C.B.I., Patna**, decided on 17th July, 2012 in Criminal Miscellaneous Case No.44576 of 2009 and in the judgment of **Gourish Shankar Bhat & Ors. Vs. Karnataka Lokayukta & Ors.**, reported in **2011 Law Suit (Kar) 864**.
8. The counsel has also relied upon the judgment of **Amit Kappor Vs. Ramesh Chander & Another**, reported in **(2012) 9 SCC 460**, in which it was emphasized that the Court shall consider the record of the case before framing of charge. Reliance has also been placed in case of **Dhariwal Tobacco Products Limited & Ors. Vs. State of Maharashtra & Another**, reported in **(2009) 2 SCC 370** regarding the exercise of inherent jurisdiction under Section 482 of Cr.P.C.

even when the alternate remedy of revision under Section 397 of Cr.P.C. is available.

9. I have heard the learned counsel for both the parties and perused the documents placed on record.
10. On perusal of the certified copies of the order-sheet of the trial Court, it appears that charge-sheet was filed on 15.06.2015. Copies of the charge-sheet were not supplied to the petitioners/accused persons on the same day and it was ordered by the Court that copies of charge-sheet be supplied to the petitioners/accused persons and on behalf of the petitioner/accused persons also it has been noted that they have not received the copies of the charge-sheet. In order sheet dated 22.06.2015, it is mentioned that copies of all the documents were tendered to be given to the petitioner/accused persons but they have refused saying that they will receive the copies of the documents in presence of their Advocates after tallying with the documents of the charge-sheet. In on order sheet dated 24.06.2015, it is mentioned that all the documents of the charge-sheet were supplied to the petitioners/accused persons in presence of their Advocates and Public Prosecutor. Order sheet dated 14.08.2015 mentions that petitioners/accused persons prayed before the Court that documents in the charge-sheet is of 12000 pages, which contains the documents of income-tax and other documents, which requires study and scrutiny for preparation of defence, hence, they may be provided facilities of laptop, printer etc. in jail along with other facilities as prayed for. Mention of documents with charge-sheet

being more than 12000 pages is again on order-sheet dated 14.10.2015, in which one of petitioner/accused person prayed for bail on the ground that for the purpose of study the documents and consulting the senior advocates, he may be granted temporary bail. In this order sheet and in the previous order sheet, no ground was raised by the petitioners/accused persons that they have not received all the copies of the documents of charge-sheet.

11. An application was moved by the petitioners/accused persons, which finds mentioned in the order dated 10.11.2015, in which it was prayed that documents provided by the prosecution does not contain any copies of document seized from Shailesh Jhunjhunwala, the Director of J.C.L. Security Pvt. Ltd., documents seized from Arun Tulsyan and Sarika Tulsyan, the accounts statement, excel-sheet, details of sells, etc. with soft copies were also not provided to them and prosecution be directed to provide the copies of those documents. Prosecution opposed the application on these grounds that documents are voluminous, hence, prosecution has exemption under Section 207 of Criminal Procedure Code to supply all the documents of the voluminous record. Even then, the trial Court allowed the application and directed the prosecution to supply all the documents to accused persons. Thereafter, accused persons also prayed for copies of case diary, which was denied that being a privileged document.
12. Application for providing facilities to study all the documents was again moved by the petitioner on 08.12.2015. An application was again moved by the petitioners/accused persons, which finds

mentioned in the order sheet dated 05.01.2016 that accused persons have not received all the documents to which the prosecution has replied that copies of all the documents have been supplied to the accused persons. The application was rejected. Various applications have been filed by the accused/persons, hence the trial Court made an observation in the order sheet dated 15.01.2016 that petitioners are delaying the proceedings of trial by presenting various applications.

13. Arguments before charge was heard on 04.03.2016, which remained part heard, which was again heard partly on 05.03.2016. On 17.03.2016 accused persons were given opportunity to tally their documents with the documents in the charge-sheet. Thereafter, an application was moved on 06.04.2016 for discharge of the accused persons. On 16.05.2016 arguments were heard on application under Section 19 of the Prevention of Corruption Act, which remained part heard, which continued for some dates and in between these proceedings, the documents of charge-sheet, which were kept open were sealed on 16.05.2016. Thereafter, after hearing arguments on various dates, the charges were framed against the petitioner – Alok Kumar Agrawal on dated 07.10.2016 and against the petitioner – Alka Agrawal on 20.10.2016.
14. Dealing with the first ground/objection raised by the petitioners/accused persons, that they have not been supplied with all the copies of documents attached with the charge-sheet, it is apparent from the perusal of the order-sheet that petitioners/accused persons were supplied with all the copies of

charge-sheet before arguments were heard by the trial Court. The arguments before charge were heard in piecemeal on various dates starting from 04.03.2016 until 07.10.2016 and 20.10.2016 on which the charges were framed. Subsequent to that on later date on 27.06.2017, petitioners/accused persons made application that they have not supplied legible copies of the documents of charge-sheet on which the trial Court has ordered the prosecution to supply fresh and legible copies of the documents of the charge-sheet. Hence, it appears that petitioners/accused persons have been supplied with all the copies of documents by the prosecution there had been some voluminous part of the documents or part of the record, even then the trial Court has directed to supply all the documents filed with the charge-sheet and the same has been complied with according to mention made in the order sheet of the concerned case. Hence, what is written in the order sheet of a Court has a status of sanctity, which can not be denied, consequent to which grounds raised by the petitioners that they have not been supplied with all the copies of documents appears to be without any substance.

15. Another ground raised that the trial Court framed charges against the accused persons on 07.10.2016 and 20.10.2016 respectively and the documents of the charge-sheet were sealed in boxes prior to that date on 16.05.2016 even then the trial Court has mentioned erroneously that all the documents of the prosecution case were perused. The submission made by the counsel for the petitioners appears to be without any substance, the reason being that the

arguments have been heard in piecemeal on various dates starting from 04.03.2016 and the documents were open and available for perusal of the Court before they sealed on 16.05.2016, hence such statement that all the documents of prosecution were not perused at all has no force. The proceeding of framing charge started from 04.03.2016 and ended on 07.10.2016 and 20.10.2016 by framing of charge against the petitioners/accused persons respectively. Hence the statement made by the trial Court in the order sheet dated 07.10.2016 and 20.10.2016 can not be considered as erroneous. When the defence has submitted arguments on various dates, the trial Court had also an opportunity to go through the documents of the charge sheet on each date. It was not necessary for the trial Court to mention that all the documents of charge-sheet were perused on the date on which the charges were framed. The duty of the Court while framing charge is to act in accordance with Section 239 and 240 of Cr.P.C., which are as under :--

“Section -239. When accused shall be discharged. – If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Section 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.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged for claims to be tried.”

16. The Hon'ble Supreme Court in case of ***Minakshi Bala Vs. Sudhir Kumar & Ors.***, reported in ***(1994) 4 Supreme Court Cases 142***, the Hon'ble Supreme Court has held in para 6 & 7, which is as follows :-

“6. Having regard to the fact that the offences, for which charge-sheet was submitted in the instant case and cognizance taken, were triable as a warrant case the Magistrate was to proceed in accordance with Section 239 and 240 of the Code at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 Criminal Procedure Code and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate finds the charge groundless he has to discharge the accused in terms of Section 239 Criminal Procedure Code; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 Criminal Procedure Code.

7. If charges are framed in accordance with Section 240 Criminal Procedure Code on a finding that a prima facie case has been made out - as has been done in the instant case the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 Criminal Procedure Code and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 Criminal Procedure Code the High court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Criminal Procedure Code; nor would it be justified in invoking its inherent jurisdiction under Section 482 Criminal Procedure Code to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

17. In view of the observation made by the Hon'ble Supreme Court in the above judgment and on the basis of the findings aforesaid, both the petitions have no merits and are dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge