

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.240 of 2018

Ramlal Jagne, S/o Hiraram Jagne, aged about 65 years, R/o House No.A-4, Amaltashpuram, Gokulpur, Dhamtari, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, P.S. Economic Offences Wing/Anti Corruption Bureau, Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Shri Kanak Tiwari, Senior Advocate with Shri Varun Sharma, Ms. Apurva Goyal, Ms. Richa Shukla and Mr. Faiz Kazi, Advocates
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

28.2.2018

1. The matter is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The revision has been preferred against the order dated 2.2.2018 passed by the Special Judge under the Prevention of Corruption Act, 1988 (henceforth 'the Act of 1988'), Raipur in Special Criminal Case No.266 of 2016, whereby the Learned Special Judge has rejected the application filed by the Applicant for grant of an adjournment and has framed charges against him under Sections 13(1)(e), 13(2) of the Act of 1988.
3. Shri Kanak Tiwari, Learned Senior Counsel appearing for the Applicant submits that the Applicant had been working as a Forest Range Officer. He subsequently retired from the post on 31.5.2016. Prior to that, on 24.3.2009, First Information Report for offences punishable under Sections 13(1)(e), 13(2) of the Act of 1988 was registered against the Applicant. The Applicant was not satisfied with the way the investigation was being carried out by the

Respondent/authorities who did not take into consideration several documents which the Applicant offered to file in support of his defence. Therefore, he preferred a writ petition being Writ Petition (Cr) No.96 of 2015 before this Court. Vide order dated 18.6.2015, the writ petition was disposed of with a direction to the Respondent authorities to consider the documents filed by the Applicant related to his income tax return and the return filed by his family members, before filing challan in accordance with law. It was further directed that the investigating agency would further be at liberty to consider all the relevant documents produced by the parties. Shri Tiwari further submits that though charge-sheet was filed on 9.11.2016, it had already been prepared on 27.4.2015 and the charge-sheet was filed on 9.11.2016 as it was prepared on 27.4.2015 ignoring the directions issued by this Court vide order dated 18.6.2015. The Applicant was arrested on 10.1.2018 and since then he is in custody. On 2.2.2018, Counsel for the Applicant submitted an application before the Trial Court for grant of an adjournment before considering for framing of charge on various grounds as well as on the ground that the important and complex facts of the case are in the knowledge of the Senior Advocate who was busy in an another case in the High Court of Chhattisgarh, but the Trial Court rejected the application and framed the charges. Shri Tiwari further submits that the Applicant is in custody since 10.1.2018. He was served with a copy of the charge-sheet on 10.1.2018 itself. The charge-sheet runs in 1200 pages. The Counsel appearing for the Applicant before the Trial Court did not get sufficient and proper time to study the charge-sheet and prepare the case for arguments. Shri Tiwari further submits that the Trial Court has failed to consider that the prosecution has failed to comply with the

directions issued by this Court in Writ Petition (Cr) No.96 of 2015 and the details of the properties of the family members of the Applicant and their income tax returns have not been given any consideration.

4. Shri Sameer Behar, Learned Counsel appearing for the State supported the impugned order and argued that sufficient and proper opportunity was afforded to the Counsel for the Applicant to prepare and argue the case.
5. I have heard Learned Senior Counsel appearing for the Applicant and Learned Counsel appearing for the State and perused the material available with utmost circumspection.
6. The law relating to framing of charges has been considered by the Supreme Court in **(2010) 9 SCC 368 (Sajjan Kumar v. Central Bureau of Investigation)**. Vide paragraph 21, the following guiding principles have been evolved for the Courts/Magistrates to follow prior to framing of charges:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test of determine prima face case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider

the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value to the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

7. In the instant case also, vide order dated 18.6.2015 passed in Writ Petition (Cr) No.96 of 2015, the prosecution agency was directed by this Court to consider the documents filed by the Applicant related to his income tax return and the return filed by his family members, before filing challan in accordance with law. It was further directed that the investigating agency would further be at liberty to consider all the relevant documents produced by the

parties. But, ignoring the above directions of this Court, the charge-sheet, which had already been prepared on 27.4.2015, was filed on 9.11.2016. From perusal of the material available, it is also clear that a copy of the charge-sheet was served on the Applicant on 10.1.2018. As submitted by Shri Tiwari, the charge-sheet is of about 1200 pages. On 2.2.2018 also, it was prayed on behalf of the Applicant that Senior Counsel will argue the matter and, therefore, an adjournment may be granted, but the Trial Court ignored the prayer and framed the charges.

8. Considering the above facts and circumstances of the case and also considering the guiding principles of the Supreme Court issued in **Sajjan Kumar case** (supra), it would be in the interest of justice to afford an opportunity to the Applicant.
9. In the result, the impugned order is set aside. The matter is remanded to the Trial Court with a direction that the Trial Court shall afford sufficient and proper opportunity to the Applicant for hearing on the point of framing of charges against him and thereafter it shall pass a reasoned order in accordance with law keeping in mind the guiding principles of the Supreme Court issued in **Sajjan Kumar case** (supra). The revision is allowed to the extent indicated above.
10. A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
Judge