

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 446 of 2018**

1. Deepak Solanki S/o Late S. P. Solanki Aged About 45 Years R/o- EWS-334, Vaishali Nagar, Bhilai, Durg, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh Through- The Police Station Patan, District- Durg, Chhattisgarh
2. Gangadhar Parate S/o Jham Singh Parate Aged About 42 Years R/o- CHPL Dream Home, Junwani Road, Smriti Nagar, P.S. Smriti Nagar, Bhilai, Durg, Chhattisgarh
3. Manish Rathore Architect Geeta Nagar, Behind National Garage, GE Road, Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri T.K. Tiwari, Advocate
For Respondent-State	:	Shri Ashish Shukla, Dy. AG for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05/03/2018**

1. Heard.
2. The present petition is against the order dated 30.10.2017 whereby the charge has been framed under Section 304 A I.P.C. against the petitioner.
3. As per the prosecution case, on 06.10.2016 one Arjun Kata, who was working under the present petitioner as an electrical contractor for Dena Bank sustained severe electrical shock and because of that he died and it is alleged that during such work no safety equipments were provided to the deceased by the present petitioner.

4. Learned counsel for the petitioner would submit that on the date of incident there was no employer-employee relationship existing in between the deceased and the petitioner. He referred to the document Annexure P-1 and submits that the tender was given on 09.08.2016 and the entire work was completed on 26.09.2016 and the incident is of 06.10.2016 and on such date no employer-employee relationship was existing in between the petitioner and the deceased, therefore, prima facie no offence is made out against the petitioner for the offence under Section 304-A I.P.C.
5. Perusal of the document would show that it contains statements of one Madhav Yadav, who was working with the deceased and one Gangadhar Parate, Branch Manager, Dena Bank, Patan. According to them the deceased was working under the present petitioner and during discharge of job he sustained electrical shock and eventually died.
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. 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.”

9. 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.
10. Applying the aforesaid principle, at this stage considering the statement and document which has been placed before the Court that the work was

completed cannot be appreciated as a defense as per the statement of the witnesses. Consequently I am not inclined to allow this petition and interfere with the order dated 30.10.2017. Accordingly, the petition is dismissed.

Sd/-

Goutam Bhaduri

Judge

Ashu