HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 770 of 2018

Badshah Ahmed S/o Shri Abdul Karim Aged About 27 Years R/o Khaguriya, Ward No. 40, Gopalganj, District : Gopalganj, Bihar **---- Petitioner**

Versus

State of Chhattisgarh through- District Magistrate Rajnandgaon, District Rajnandgaon, Chhattisgarh **--- Respondent**

For the Petitioner	:	Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Shashibhushan Tiwari, Adv.
For the State	:	Mr. Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23.04.2018

1. The instant petition is against the order dated 07.02.2018 passed by the first Additional Sessions Judge, Rajnandgaon in Criminal Revision No. 7/2018 wherein the challenge made to the charge framed by the Court of JMFC, Rajnandgaon by order dated 07.12.2017 for the offences u/ss 384, 420, 467, 468, 471, 120-B & 201 of IPC was dismissed.
2. As per the prosecution case, on 03.05.2017 the complainant Seema Khubchandani boarded the Geetanjali Express Train to reach Rajnandgaon and while travelling she met some unknown passengers namely Pooja and Nisha @ Usha alongwith their male friends and after developing friendship with them in the train the complainant disclosed her entire family background and gave her mobile numbers. Subsequently the complainant had received the phone calls threatening to kill her family members if the money is not

deposited, therefore, she deposited money on 24 times to the tune of Rs.10 lakhs in different banks accounts. Thereafter, on a report being made, the crime was registered and during the course of investigation certain counterfoil receipts in respect of the deposits made by the complainant in different bank accounts were collected. Thereafter the information of call details was also obtained through Cyber Cell and the accounts were traced and on the basis of bank account, co-accused Dhiraj Kumar was was taken into custody and during interrogation, his memorandum statement was recorded wherein it was revealed that accused Dheeraj Kumar in collusion with other accused formed a group and got opened forged bank accounts on the basis of forged documents and after contacting the people got the amounts deposited by the victims in such forged accounts. Thereafter few of the other accused were apprehended from whom the mobiles, passbooks, ATM cards, Voter IDs, PAN cards etc., were seized. After filing of the charge sheet, the JMFC framed the charges u/s 120-B, 384, 467, 468, 471, 420, 201 read with section 34 of IPC. The said charges having been challenged before the revisional Court, the revisional Court has also affirmed the same and dismissed the revision. Hence this petition.

3. Learned counsel for the petitioner would submit that even no iota of evidence is available in this case against the present petitioner as the memo of arrest would show that his name is Badsha Ahmad. He further submits that the memorandum documents placed on record would not show the connection of the present applicant with the alleged

crime. He further submits that only on apprehension the applicant was arrested and the charges have been framed and even if the entire documents are accepted, no offence is made out against the present applicant.

4. Per contra, learned State Counsel vehemently opposes the same and submits that the investigation is still going on and certain evidence is yet to be collected from railways.

5. Perused the statement of complainant Smt. Seema Khubchandani. Her statement would reveal that she had disclosed certain mobile numbers and she had stated that she received different phone calls from different mobile numbers and threats were extended that if the money is not paid her family members would be eliminated as such on 24 times, she has deposited amounts in different bank accounts to the tune of Rs.10 lakhs. The documents of Cyber cell placed on record would reveal that the information of 10 different mobiles numbers and their phone call details have been obtained through Cyber Cell which is preserved in a Compact Disc (CD). The memorandum statement of accused Dheeraj Kumar reveals that he has stated that he along-with other accused persons prepared a group and opened the forged accounts and after contacting the people got the money deposited in different bank accounts. It is further stated that in 2017 while travelling in the train, he met the complainant Seema Khubchandani and the entire family details and mobile number were obtained and thereafter they got the amount deposited in the bank account of one Sonu Singh and further different amounts were also deposited by the complainant in different bank

accounts of other accused. A perusal of the voluminous documents placed on record would show that the police is still carrying out the investigation and further they are in process to obtain certain evidence from he Railways.

6. When the custodial interrogation of one of the accused is made during investigation it leads to unearth the links involved in criminal conspiracy committed by the persons which ultimately led to the capital tragedy. Further perusal of the documents would show that the prosecution has already started with their witnesses and statements of 3 witnesses have already been recorded. At this stage, what is the admissibility of such evidence cannot be weighed.

7. 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.”

8. Further 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.

9. Applying the aforesaid principles and taking into the totality of the facts situation of the case, it cannot be appreciated at this stage that the petitioner was completely insulated of the facts and knowledge. After perusal of the voluminous documents especially the documents of cyber cell, I am of the opinion that the fact still remains that the investigation is not complete in all respects and is being carried out which cannot be shelved. Therefore, the arguments advanced by the learned counsel for the petitioner cannot be appreciated at this stage.

10. In view of the foregoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, this petition is dismissed.

Sd/-

GOUTAM BHADURI
JUDGE

Rao