

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 326 of 2017

1. Kishan Upadhyay, S/o. Satyanarayan Upadhyay, Aged About 26 Years, Presently Aged About 33 Years), R/o. Near Mehar Ishwari Kirana Store, Kapa, Lodhipara, Police Station Mowa, Raipur, District Raipur, Chhattisgarh.
2. Manharan Lal, S/o. Panch Ram Rajak, Aged About 60 Years, (Presently Aged About 67 Years) R/o. Village Sewar, Police Station Chakarbhata, District Bilaspur, Chhattisgarh.

---- Petitioners

Versus

State Of Chhattisgarh, Through the District Magistrate, Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner : Mr. Abhijeet Mishra, Advocate

For Respondent : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

07.05.2018

Heard

1. This petition is against the order dated 22.02.2016 passed in Criminal Revision No.162/2015 whereby the order of the Judicial Magistrate First Class, Bilha, District Bilaspur wherein the charges have been framed under Sections 409, 467, 468, 471 of Indian Penal Code and Section 3, 7 of the Essential Commodities Act, 1955 was affirmed.
2. Learned counsel for the petitioner submits that the petitioner No.1 Kishan Upadhyay was working as Salesman in Fair Price Shop and the petitioner No.2 Manharan Lal was Secretary of the Gram Panchayat Kharkena, which used to distribute the fair price to the villagers. It is contended that the prosecution has failed to prove

the fact to bring home the ingredients of Section 406 initially therefore the petitioners were discharged under Section 406 of I.P.C. for non-filing of any document till 08.02.2010. Subsequently, the charge sheet was filed in the month of July, 2011 under Section 409, 467, 468, 471 of I.P.C. and Section 3, 7 of the Essential Commodities Act. The counsel submits that the prosecution has not been able to prove that there is an entrustment of the goods and petitioners were working as public servant. He placed his reliance in case of **Robert John D'Souza & Ors. v. Stephen V. Gomes & Anr.** reported in **(2015) 9 SCC 96** and would submit that in order to prove the ingredients under Section 409 of I.P.C, the prosecution has to prove the entrustment and the petitioners were working as public servant. It is stated the charge sheet so filed, no document has been placed on record to attract two requirements as aforesaid. It is stated that therefore the basic ingredients has not been proved. He further submits that the documents of the prosecution and charge sheet even if are accepted would not make out a case against the petitioners. He also relied on a case in between **Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.** reported in **(1998) 5 SCC 749** and submits that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. Since in this case there is absence of prosecution ingredients therefore the prosecution cannot go.

3. Perusal of the record would show that on 13.08.2009 a report was lodged to the Police by the Food Inspector Takhatpur that at the Fair Price Shop of the village Kharkena which was being run by the Gram Panchayat had not distributed the food grains for the

month of July, 2009 to the beneficiaries. Subsequent thereto, an inspection was made on 21.07.2009 and it was found that the food grains i.e. Rice, Wheat, Sugar, Salt etc. has not been distributed for the month of July, 2009. The inspection also shows that though the goods were received by the Fair Price Shop wherein the petitioners along with other Sarpanch was in hold and incharge of the shop and the goods for distribution though received but the same was not distributed. The statement of the food inspector and the inspection report also perused. Therefore, at this stage, it would be pre-mature to hold that the petitioners were not entrusted with the goods and were not discharging any public duties.

4. Taking into stage of trial, time & again, the Supreme Court has held that at the stage of framing of charge, the defence of the accused cannot be put forth. At this stage, if the statements are evaluating, this cannot be presumed that the Court may not accept the evidence of the food inspector. Lastly in case of ***State of Rajasthan v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796*** the issue has been laid down by the Supreme Court that at the time of framing of a 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.
5. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the petitioners cannot be accepted

as gospel truth. The same has to be decided on the floor of the Court during evidence while they are tested by virtue of examination and cross examination.

6. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the petition is dismissed.

Ashok

Sd/-
(Goutam Bhaduri)
Judge