

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 422 of 2017

Anil Kumar Kaiwart S/o Shri Bandhanram Kaiwart Aged About 45 Years By Caste- Kaiwart, Present R/o Village Panchayat Secretary Bandhakhar, Tahsil And Police Station- Pali, District Korba, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The District Magistrate, Korba, District Korba, Chhattisgarh.

---- Respondent

For petitioner – Shri Awadh Tripathi, Advocate.
For State- Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order

20/04/2018

Heard.

1. Instant petition is against the order dated 6/01/2017 passed by the Additional Sessions Judge, Katghora in Criminal Revision No.42/2013 whereby revision preferred by the petitioner was dismissed. Revision was against the order dated 20/03/2013 passed by the JMFC, Pali wherein charges have been framed against the petitioner.
2. According to the case of the prosecution, charge sheet was filed against the petitioner and other co-accused under sections 420, 467, 468 and 471 read with 34 of IPC. Allegation is that the petitioner was working as Secretary of Gram Panchayat Bandhakhar land bearing khasra No.693/1Ja/3, 732/2 and 732/7 admeasuring total 0.597 hectare which belong to the wife of the complainant namely Paras Nath Kanwar one person namely Kanhaiya filed an application for mutation of his name in respect of the land in the name of sister-in-law namely Sukhmani and accordingly mutation was carried out. When complaint was lodged by Paras Nath Kanwar it revealed that said Kanhaiya who filed an application for mutation has wrongly stated that wife of the complainant was dead and Kanhaiya

subsequently sold the land to one Raju Kedia. Role of the petitioner is that he being Secretary of Gram Panchayat in the mutation proceeding he has recorded the minutes which facilitated for mutation of the name.

3. Learned counsel for the petitioner would submit that petitioner under the provisions of Land Revenue Code was duty bound to record the proceeding. He would further submit that under Section 129 of the Panchayat Raj Adhiniyam petitioner being Secretary was duty bound to record minutes and decision of every meeting. It is stated that therefore if the resolution was passed by the gram panchayat he could have refused to record the same. He further submits that death report of Sukhmani was written by the Patwari and there was no occasion to disbelieve the same and gram panchayat has passed the order and he had done only the ministerial work and has recorded the same, therefore charges so framed are bad in law which requires to be set aside.

4. Perused the documents. Also perused the statement of Sukhmani Devi wherein joint allegations have been attributed to the petitioner alongwith others that they in furtherance to cheat the complainant have shown Sukhmani to be dead and mutated name of Kanhaiya Nayak. It is further stated that subsequently land was sold to Raju Kedia. Likewise statement of Parasnath would show that joint allegation have been made that the petitioner in connivance with other co-accused prepared forged document and mutated name of Kanhaiya Nayak in respect of the land. Allegation therefore are that the petitioner in connivance with each other in furtherance of the common intention had committed the offence. *Mens rea* and role played by the petitioner cannot be appreciated by this court at this stage as while hearing this petition under Section 482 of Cr.P.C. it is a matter of evidence.

5. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the

accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the petitioner, cannot be accepted as *prima facie* the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?

6. 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 v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage 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.

7. 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 applicant 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.

8. 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.

Sd/-

(Goutam Bhaduri)

JUDGE