

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 174 of 2015**

1. Mandeep Panda S/o Late Umashankar Panda Aged About 36 Years R/o Ganjpara Durg C.G.
2. Smt. Swati Gupta W/o Yuvraj Gupta Aged About 33 Years R/o Baniyapara Dhamdha, Distt. Durg C.G.

---- **Petitioners****Versus**

- State of Chhattisgarh Through Police Station Dhamdha, District Durg C.G.

---- **Respondent**

For Petitioners	:	Shri A.C. Sahu, Advocate
For Respondent-State	:	Shri SRJ Jaiswal, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****04/01/2018**

1. Heard.
2. The present petition is against the order dated 09.10.2014 passed in Criminal Revision No.117/2010 by the Additional Sessions Judge, Durg, District Durg, whereby the revisional Court has affirmed the order passed by the JMFC whereby the charges were framed under Sections 3 & 7 of the Essential Commodities Act by order dated 27.07.2010.
3. Learned counsel for the petitioners would submit that there is no iota of evidence against petitioner No.2. The allegations have been leveled against only Mandeep Panda, who was a broker and there is no document to show that the rice mill wherefrom the alleged recovery was made from the trucks

was owned by Swati Gupta but actually the same is owned by her husband namely Yuvraj Gupta, therefore, the charges framed are without any substance and they are required to be set aside.

4. Per contra learned State counsel opposes the same.
5. Perused the order as also the documents filed along with the petition.
6. As per the prosecution, on 28.07.2007 on an information received that three trucks loaded with the rice were stationed at Madhu Rice Mill and on enquiry it was revealed that the said rice were sent from Swati Rice Mill. When the further enquiry was made, the Manager of the Swati Rice Mill Swati Gupta disclosed that the sugar & wheat were purchased from Durg and rice was owned by them but no document of purchase of any rice was produced. It was also revealed that the husband of Swati Gupta namely Yuvraj Gupta was running a government shop and the rice, sugar & wheat, which were meant to be distributed for the Public Distribution System were kept in the rice mill. Consequently, the offence was registered.
7. 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.”

8. 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)**.
9. 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 applicant, 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 ?
10. 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.

11. Applying the aforesaid principles in this case, after going through the documents, defence adduced by the petitioner cannot be accepted as gospel truth and he will be at liberty to confront the witnesses with the necessary documents at the stage of evidence when the witnesses are cross-examined.

12. 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

Ashu