

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 746 of 2017

Santosh Nande, S/o. Shri Kunj Bihari Nande, Aged About 54 Years, Occupation Service, At Sakri Branch Manager, SBI Branch Baramkela, District Raigarh (Retired from his service) Presently Resided at Kenwatapara, Raigarh, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh, Through District Magistrate, District Janjgir-Champa, Chhattisgarh.

---- Respondent

For Petitioner : Mr. V.C.Ottalwar, Advocate

For Respondent : Mr. Ashish Shukla, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.01.2018

Heard

1. This petition is against the order dated 07.12.2016 passed by the Second Additional Sessions Judge, Sakti, District Janjgir-Champa in Criminal Revision No.35/2016. By such order, the revisional Court has affirmed the order of the J.M.F.C. dated 23.09.2016 whereby the charges were framed against the petitioner under Section 409 & 420/34 of Indian Penal Code.
2. As per the prosecution case, a report was made by the complainant Tirith Bai that she was holding a Bank Account in State Bank of India, Jaijaipur, whereby the petitioner was working as Branch Manager and from the account of the complainant on 14.01.2005 an amount of Rs.1,10,000/- was withdrawn by someone. Subsequently, during the course of evidence, the other co-accused has moved an application under Section 319 of Cr.P.C. and petitioner has been made an accused.

3. Learned counsel for the petitioner submits that the petitioner being the Branch Manager has not played any role for such withdrawal and how the fraud can be committed as it was simply withdrawn, therefore, Section 409 of I.P.C. would not be made out.
4. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the petitioner.
5. Perused the order of the Court below and the record. Perusal of the record would show that initially it was found that one of the accused Kiran Kumar was made an accused against whom the charge sheet was filed under Section 420, 467 & 468 of I.P.C. and thereafter including the complainant the statement of the present petitioner and other witnesses namely Radha Bai & Subhash Kumar, thereby total five witnesses were recorded. The record would show that it was found that the present petitioner has verified the withdrawal form having a thumb impression and allowed the amount to be withdrawn and after verifying the pass-book and photo alongwith withdrawal and identifying Tirith Bai, token was given to the complainant Tirith Bai and subsequently the amount was paid. Whereas as per the prosecution on the date on 14.01.2015 Tirith Bai had never went to the Bank for withdrawal and eventuality the thumb impression also did not tally with the withdrawal, thereby the petitioner was inculpated and the charges have been framed.
6. The Supreme Court in a case of ***Shoraj Singh Ahlawat Vs. State of U.P.*** reported in ***AIR 2013 SC 52*** 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. 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 ?

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 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.
10. 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.
11. 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