

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1549 of 2017**

N. Tirkey (Norbertus Tirkey), S/o. Pius Tirkey, Aged About 64 Years, R/o. Opposite Rest House, Kunkuri, Jashpur, District Jashpur, Chhattisgarh

---- **Petitioner**

Versus

State Of Chhattisgarh, Through Police Station- Kotwali, Jashpur, District Jashpur, Chhattisgarh.

---- **Respondent**

For petitioner : Dr. N.K.Shukla, Senior Advocate with
Mr. Sanjeev Kumar Sahu, Advocate

For State : Mr. S.K.Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.03.2018

Heard.

1. The present petition is against framing of the charge against the petitioner under Section 420, 409, 467, 468, 471 & 120-B of I.P.C.

2. According to the prosecution, the petitioner was working as an Executive Engineer in MGNREGA at Jashpur wherein in different blocks the development work was being carried out. It is the case of the prosecution that during such execution of work by inflating the work actually done, payments were made to different persons and forged documents were also prepared whereby Rs.38,87,737/- was misappropriated. It was the further case that three members team of the Executive Engineer was prepared to evaluate the work wherein different fallouts were found; consequently the charge sheet was filed.

3. Learned counsel for the petitioner would submit that the document also contains a report of three Executive Engineers which would demonstrate that only certain irregularities have been committed, which cannot be equated to the criminality. He further submits that during the investigation, the entire matter and the documents were taken in the probe, however, without application of mind and taking outcome of such document which only points out illegality not criminality, the charge sheet has been filed.

4. Learned State counsel opposes the same.

5. The Supreme Court in a case law reported in ***AIR 2013 SC 52 – Shoraj Singh Ahlawat v. 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.”

6. 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 ?

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. 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 in this case and taking into consideration the documents, the argument advanced by the learned counsel cannot be appreciated at this stage. Whether the enquiry

report which was being referred by the different Executive Engineers the inference can be drawn from it that it only point out irregularities or any illegality or any criminal act. Those presumption of irregularities can only be arrived at after evidence is adduced and the witnesses are examined. The defence adduced by the petitioner cannot be accepted as gospel truth and the petitioner would be at liberty to confront the prosecution witnesses with the necessary documents and cross examine them during evidence.

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