

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1605 of 2017

Sudhir Kumar Bhole S/o Late Prakash Bhole, Aged About 40 Years
Permanent R/o Kalapada, Vikas Nagar, Baitul (M.P.) Presently
Residing at Sr. M I G - 316, Vijeta Complex, New Rajendra Nagar,
Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, General Administration Department, Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur.
2. The Economic Offences Wing / Anti Corruption Bureau, Through its Superintendent / Officer In - Charge, Raipur Chhattisgarh.
3. State Civil Supplies Corporation, Through Its Managing Director, Avanti Vihar Raipur Chhattisgarh.

---- Respondents

For petitioner –Shri Aditya Tiwari, Advocate.
For State- Shri Ashish Shukla, Dy.A.G.
For respondent No.3-Shri Abhishek Vinod Deshmukh, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

11/04/2018

Heard.

1. Instant petition is against the framing of charge against the petitioner by an order dated 20/06/2016 whereby charges have been framed under sections 13(1)(a) and 13(2) of Prevention of Corruption Act read with sections 409, 420, 466, 467, 468 & 120-B of IPC.
2. Learned counsel for the petitioner would submit that charge as has been framed would reveal that it has been stated that the petitioner was working as Branch Manager in the Nagrik Apoorti Nigam (for short shown as NAN) whereas he was actually working as Assistant Accounts Officer and he was no where in any way was with authority to control the order for delivery and acceptance of the paddy/rice. He submits that entire work was the responsibility of the other officers and the prosecution itself is not in know of

the fact about current position of the petitioner as would be evident from the charge sheet wherein he has been shown as Branch Manager. He therefore submits that under the circumstances since no allegation can be attributed against the petitioner that he was not in hold of any official duty which has been alleged to have been infringed, the charges framed against him may be quashed.

3. Learned State counsel and counsel for respondent No.3 would submit that framing of charge it's order is revisable and during raid of the ACB more than Rs.7 lakhs was recovered from the possession of the petitioner. They submit that meticulous examination at this stage is not called for and the petitioner would be free to lead his evidence before the court and therefore submits that petition deserves to be dismissed.

4. As per the prosecution case, petitioner while working in the office which was responsible to procure rice of the quality in packing keep the same in the godown of NAN. It is stated that the petitioner alongwith other officials in connivance with each other made arm twisting to the respective millers to extend threat to reject the quality rice to show it as substandard and recovered money. Further it is alleged that the petitioner alongwith others hatched criminal conspiracy to recover amount which they were not entitled in their official capacity so as to show and project standard rice as substandard as also rejected the rice by projecting that there is no space left in the godown and to allow the same in godown recovered money. It is also alleged that the officers accepted substandard rice and paid the amount on the support price fixed by the government to the respective millers, thereby has committed the offence.

5. Prima facie, the perusal of the charge would show that detail allegations have been made against the petitioner and the other accused and charges have been framed under sections 13(1)(a) and 13(2) of Prevention of Corruption Act read with sections 409, 420, 466, 467, 468 & 120-B of IPC.

6. Taking into nature of the allegations and charges framed as principle

has been laid down in case of **Shoraj Singh Ahlawat Vs. State of U.P.** reported in **AIR 2013 SC 52** court has observed that while trying the case court can only 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 gospel truth. *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 on framing of charge 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 petitioner 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