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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 47 of 2019**

1. Ravi Karma S/o Late Chandanram Karma Aged About 35 Years R/o Kailash Nagar, Dantewada, District : Dantewada, Chhattisgarh
2. Shantanu Kar S/o Shri Somnath Kar Aged About 48 Years R/o Mandirpara, Dantewada, District- Dantewada, District : Dantewada, Chhattisgarh
3. Pawan Singh @ Lalu Thakur S/o Late Dhan Singh Thakur Aged About 27 Years R/o Tribal Colony, Dantewada, Tahsil & District- Dantewada, Chhattisgarh
4. Dinesh Kumar Behra S/o Late S.N. Behra Aged About 23 Years R/o Tribal Colony, Dantewada, Tahsil & District- Dantewada, Chhattisgarh.

Versus

State of Chhattisgarh through District Magistrate, District- Dantewada,
Chhattisgarh. **--- Respondent**

For the applicant	: Mr. Shrawan Agrawal, Advocate.
For the Respondent	: Mr. Aditya Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****09.01.2019**

1. Heard.
2. The present petition is against the order dated 30.07.2018 passed by the Sessions Judge South Bastar, Dantewada in Criminal Revision No.21/2018 whereby the revisional Court has affirmed the framing of charges against the applicants u/ss 186, 257, 294, 506 of IPC read with section 34 of IPC.
3. The petitioner alleges that on 25.06.2015 a report was made by one K. Laxmana Rao that when Patwari and other Government officials in order to prevent drinking liquor at open place entered into a shop which was covered by a

Plastic polythene sheets and saw that the present applicants was consuming liquor inside the covered place and having objected to the said act, they were abused and threatened. Consequently a report was made.

4. Learned counsel for the petitioners would submit that the premises wherein the alleged offence is said to have happened is not a public place and it is an open place and if some one enters into the premises of a person wherein the liquor was alleged to be consumed, the offence cannot be made out.
5. Perused the document. Copy of the charge sheet is annexed to the petition. It also contains a map of the place wherein the alleged incident is said to have happened. The map shows that on the side of road, the petitioners were consuming the liquor in a covered place which is shown to be alleged place of incident and whether it was an open place or it was a superstructure existed there is to be established during the course of evidence. Prima facie the map shows that it is an open place where a coconut shop is there near a banyan tree.
6. 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.”

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 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 ?
9. Applying the aforesaid principles in this case and after going

through the documents, defence adduced by the petitioners cannot be accepted at this stage. The shall be at liberty to confront the witnesses with the necessary documents at the stage of evidence when the witnesses are cross-examined.

10. Therefore, in view of the foregoing discussion, I am not inclined to interfere with the impugned order of the framing of charges. Accordingly, the petition is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**