

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved On 21.08.2019

Order Delivered On 21.11.2019

CRR No. 126 of 2019

- Khemlal Khunte S/o Bhonduram Khunte Aged About 46 Years R/o Village Banjari, Police Station Sarangarh, District Raigarh Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Sariya, District Raigarh Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Gurudev I. Sharan, Adv.
For Respondent/State	:	Ms. Reena Singh, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

21.11.2019

1. This revision has been filed against the order dated 24.11.2018 passed by learned Special Judge (NDPS Act) Raigarh, District Raigarh (C.G.) in Special Case No. N.D.P.S. Act 1985/26/2018 wherein charge under Section 20 (b)(ii)(c) of NDPS Act has been framed against the applicant.
2. Brief facts of the case are that on 01.10.2018, complainant A.S.I. Janak Ram Sahu, who has registered Dehati Nalishi, searched the vehicle of applicant bearing registration No. C.G.-13 ZG-1208 and seized total 30.00 Kg. contraband article cannabis (Ganja) from the possession of applicant during the checking of vehicle. After completion of

investigation charge-sheet has been filed.

3. Learned trial Court after hearing the argument before framing of charge vide impugned order dated 24.11.2018, framed charge against the applicant under Section 20(b)(ii) (c) of NDPS Act. Hence, this revision.
4. Learned counsel for the applicant submits that the learned Special Court has committed error in the eyes of law. He further submits that the Hon'ble Apex Court has decided that in case of NDPS, "if informant and Investigating Officer are same person, then the investigation said to be vitiated." In this case also informant and Investigating Officer was same person, So, accused/applicant is entitled for acquittal and impugned order is liable to be set-aside.
5. In support of his argument, he placed reliance on ***Mohan Lal v. State of Punjab (AIR 2018 SC 3853) & State of Rajasthan v. Fatehkaran Mehdu [(2017) 3 SCC 198]***.
6. Learned counsel appearing on behalf of the State supported the impugned order.
7. I have heard learned counsel for the parties and perused the material available on record.
8. Sections 227 & 228 of Cr.P.C. provides thus:-

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.- (1) If, after such

consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, ⁷[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

It is clear from the language of Sections that “ Judge is of the opinion that there is ground of presuming that the accused has committed an offence”, he shall frame in writing a charge against the accused.

9. The Supreme Court has recently in the case titled ***Dipakbhai Jagdishchandra Patel v. State of Gujarat and Another***, decided on 24.04.2019 in

⁷ Substituted by Act 25 of 2005, S.22, for “ and thereupon the Chief Judicial Magistrate” (w.e.f. 23.06.2006)

Criminal Appeal No. 714 of 2019 made observations regarding the law relating to framing of charge and discharge and has held that all that is required is, that the Court must be satisfied that with the material available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material.

10. The Supreme Court in the case of ***Amit Kapoor vs. Ramesh chander & Another*** reported in [(2012) 9 SCC 460] has held as under:-

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents

of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

12. The Case of Mohan Lal (Supra) came before the Hon'ble Apex Court after final judgment but in the present case at the time of framing charge it is not expected from Court to evaluate every documents and merit of the case, and the case of **Mohanlal (Supra)** is presently referred to the larger bench of Hon'ble Apex Court.
13. In view of the above, this Court is of the considered opinion that, at this stage, revision against the impugned order dated 24.11.2018 is not maintainable.
14. Accordingly, this revision has not substantiated and it is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE