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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 17.7.2019

Order delivered on 02.8.2019

CRR No. 647 of 2019

Dinesh Kumar Jain @ Bunty S/o Shri Satyapal Jain, Aged About 34 Years R/o Shanti Nagar, Church Road, Jagdalpur District - Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through State Economic Offiences Investigation And Anti Corruption Bureau, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondent

And

CRR No. 741 of 2019

Ramkaran Kumhar S/o Shri Lusu Prasad Kumhar Aged About 59 Years Posted As Executive Engineer At Public Works Department, Jagdalpur, District Bastar Chhattisgarh, R/o House No. 19/16, Aamakherwa-2, Mahendragarh, District Koriya (Baikunthpur) Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through State Economic Offences Investigation And Anti Corruption Burreu, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----Respondent

For Revisioner/Applicant	: Shri Manoj Paranjape, Advocate in Cr. Revision No. 647/2019
For Revisioner/Applicant	: Shri Akhanth Pratap Pandey, Advocate in Cr. Revision No. 741/2019
For Respondent /State	: Shri R.S. Baghel, Dy. Advocate General in both the Cr. Revisions

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Hon'ble Smt. Justice Rajani Dubey

CAV Order

02/08/2019

1. Heard on admission.

2. As these two Criminal Revisions arise out of the common order dated 29.4.2019, passed by the Special Judge (Anti Corruption) North Bastar Kanker, District Kanker (CG) in Anti Corruption Special Case No. 1/2018, they are being disposed of by this common order.

3. A charge sheet has been filed before the Special Judge, Anti Corruption, North Bastar Kanker, District Kanker against the applicants for the offence punishable under Sections 13(1) (e) and 13 (2) of the Prevention of Corruption Act, 1988 and Sections 109, 193, 120B, 201 of the IPC by the State Economic Offences and Anti Corruption Bureau, District Raipur.

4. The brief facts as per the prosecution are that on 10.11.2015 during routine vehicle checking at National Highway No.30, at Kanker, vehicle of the applicant Dinesh Kumar Jain bearing No.CG/17/KH/9814 was intercepted by the Police of Crime Squad and traffic police, which was being driven by the driver of the applicant(Dinesh Kumar Jain) namely-Anant Ram and applicant/co-accused Ramkaran Kumhar, Executive Engineer, National Highway PWD was sitting in the vehicle. Upon search cash of Rs.11 lakhs was found in the trolly bag kept in the vehicle. The said amount was seized under Section 102 of the Cr.P.C. and Income Tax Department was informed. The Income Tax Department investigated the matter and vide its memo dated 17.2.2016 referred it to Anti Corruption Bureau, Raipur. After investigation, charge sheet was filed against Ramkaran Kumhar under Sections 13 (1) (e) and 13 (2) of the Prevention of Corruption Act, 1988 & Sections 193, 120B, 201 of the

IPC and against applicant Dinesh Kumar Jain @ Bunty under Sections 193, 120B, 201 of the IPC.

5. The learned Special Judge (Anti Corruption) North Bastar, Kanker has framed charges against the applicants under Sections 13(1) (e) and 13 (2) of the Prevention of Corruption Act, 1988 and Sections 109, 193, 120B, 201 of the IPC. Hence, this revision.

6. Learned counsel for the applicant appearing on behalf of applicant Dinesh Kumar Jain @ Bunty submitted that the impugned order is bad in law and it is liable to be set aside and the applicant deserves to be discharged. The applicant is not a govt. servant. He is a petty contractor. He had sent the alleged amount to Raipur for some business purpose, therefore, charge under Section 193, 120B, 201 of the IPC is not made out against the applicant and prosecution of the applicant would be none but abuse of process of law. Even if contents of the charge sheet are taken to be true on its face value, then also the instant charge sheet does not disclose commission of any offence against the applicant. He submitted that the applicant has also submitted his Bank Statement, copy of Income Tax return of few years, but the learned trial Court did not consider any document. Section 44AD of the Income Tax Act provides that if at all the applicant would be found to have earned Rs.11 lakhs out of his business even then he would be liable to pay penalty under the Income Tax Act, but offence under the Indian Penal Code would not be made out. The contents of the entire charge sheet does not establish any of the ingredients of Sections 193, 120B and 201 of the IPC and there is no evidence to show that for some extraneous consideration, the applicant had given money to the co-accused because the prosecution agency has not collected any material to show any kind of business transaction between the applicant and the co-accused, therefore, the FIR is baseless. He also submitted that Section 193 Cr.P.C. provides for judicial proceedings before court below. Ingredients of Section 201 and 120B IPC are also not attracted in this case. Mere suspicion is not sufficient, therefore, order dated 29.4.2019 passed by the Special Judge is liable to be set aside. He placed reliance in the matters of **DSP, Chennai Vs. K. Inbasagaran, (2006) 1 SCC 420**, **Mauvin Godinho Vs. State of Goa, (2018) 3 SCC 358**, **Virindar Kumar Satyawadi Vs. State of Punjab, AIR 1956 SC 153, Sheo Raj Vs. State (1964) 2 Cri LJ 1, Allahabad High Court**, **Sh.Narendra Kumar Srivastava Vs. The State of Bihar & Ors. in Cr. Appeal No.211 of 2019 Judgment dated 4.2.2019 passed by the Hon'ble Supreme Court, Emperor Vs. Purshottam Ishvar Amin in Cr. Revision No.196 of 1920, passed by the Bombay High Court and State by the Inspector of Police, Chennai Vs. S. Selvi and Another, (2018) 13 SCC 455.** Learned counsel for the applicant submtted that police investigation under Chapter XIV of the Cr.P.C. is not a self judicial proceeding within the meaning of that term used in the IPC.

7. Learned counsel appearing on behalf of the applicant Ramkaran Kumhar argued that the applicant has been falsely implicated in the offence and the impugned order is bad in law. He submitted that from bare perusal of the charge sheet it is clear that owner of the vehicle was sending the said money to Raipur for some business purpose and as suddenly applicant had to go to Raipur and because of lack of time he took lift in the vehicle of Dinesh Kumar Jain and thus, he was travelling in the said vehicle. He submitted that the applicant and co-accused, Dinesh Kumar Jain have given a detailed explanation and the prosecution has seized Bank Statement and Income Tax return from the co-accused, therefore, no offence is made out against the applicant- Ramkaran Kumhar. The co-accused has already filed application for Supurdnama of the seized money which is pending vide Cr. Revision No.499/2019 before this Court. He submitted that prosecution has not proved the ingredients of offence under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act as also there is no evidence to suggest that for some extraneous consideration the applicant received the money from the co-accused because there is no material to show any kind of business transaction between them, therefore, the FIR is also baseless. He submitted that offence under Sections 193, 120B, 201 of the IPC is not proved against the applicant, therefore, the impugned order may be set aside.

8. On the other hand learned counsel for the State supported the order and submitted that there is no irregularity or infirmity in the order passed by the Special Judge.

9. I have learned counsel for the parties and perused the record.

10. In **Sajjan Kumar Vs. CBI, (2010) 9 SCC 368**, Hon'ble the Apex Court held that at the time of framing of charges, the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be. Hon'ble the Supreme Court in the matter of **Om Wati (Smt) And Another Vs. State, Through Delhi Admn. And Others, (2001) 4 SCC 333**, has held in para 10 as under :

"10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considrations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in Satish Mehra v. Delhi Admn.[(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

"9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section

227 of the Code of Criminal Procedure (for short 'the Code') which reads 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.'
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> Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another, (2001) 9 SCC 631** that revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits.

11. The learned trial court found sufficient ground against the applicants and framed charges accordingly. It is also clear from the record that there is sufficient material against the applicants for the above charges, therefore, I am of the view that there is no illegality or infirmity in the order passed by the trial Court warranting interference by this Court.

12. The revisions have no merits. Accordingly, both the revisions are dismissed at the motion stage. However, liberty is given to the applicants to raise their objections at the time of final hearing of the matter.

Sd/

(Rajani Dubey)
JUDGE

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