

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 867 of 2019

- Shailesh Toppo S/o S. L. Toppo, Aged About 18 Years, R/o Village Devrikhurd, P.S. Torwa, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, through the Station House Officer, Police Station, Sakri, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

----Non-applicant

For Applicant – Shri Goutam Khetrapal, Advocate.

For Non-applicant/State – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

27-11-2019

1. This revision petition has been brought against the framing of charge against the applicant. By the impugned order dated 22-06-2019 passed by the Sessions Judge, Bilaspur, Chhattisgarh in Sessions Trial No.25/2019 the charges under Section 342/149, 323/149 & 395 of the IPC have been framed against the applicant.

2. It is submitted that the charge framed against the applicant under Section 395 of the IPC is not at all maintainable for the reason that only two persons have been charged. According to the written complaint vide Annexure-A/3 given on by the complainant three to four persons assaulted and looted him on 07-10-2018. Therefore, the complaint is belated by two days on the basis of which the FIR was lodged. Subsequent to that the complainant improved his statement under Section 161 of the Cr.P.C. naming 7 persons being involved in the incident which is not at all believable. The investigating officer has further not charge-sheeted the other accused persons making a mention that the rest of the accused persons shall be charge-sheeted separately after they are searched and arrested. Therefore, it is prayed that the

charge against the applicant under Section 395 of the IPC be set aside.

3. Learned counsel for the State/respondent opposes the petition and submits that the evidence in the charge sheet filed is complete in this respect that the applicant was one of the 5 to 6 persons who were engaged in assaulting and looting the complainant, therefore, the offence of dacoity under Section 395 of the IPC is clearly made out.

4. Heard learned counsel for the parties and perused the documents.

5. The reliability of the evidence collected in the investigation is not to be appreciated, accepted or denied at the stage of framing of charge. It has been held in **Supdt. & Remembrancer of Legal Affairs West Bengal Vs. Anil Kumar Bhunja & Ors.**, 1974 4 SCC 274 by the Bench of three Judges that at the stage of framing charge the truth, veracity and effect of the evidence which is proposed in the prosecution cannot be meticulously judged. The Magistrate has to form presumptive opinion as to the existence of factual ingredients constituting offence. It has also been held that even in case of strong suspicion the charge can be framed. Therefore, in view of this judicial pronouncement quality of evidence proposed against the applicant in prosecution cannot be appreciated at this stage. The failure of prosecution in filing charge sheet against the persons absconding can be dealt with by the trial Court itself as there is no such provision in the Cr.P.C. that filing of any charge sheet can be withheld if the accused persons are not found, on the other hand, Section 299 of the Cr.P.C. provides that evidence can be recorded by the trial Court in case of absconsion of accused so that such evidence of witness or witnesses can be used in future when the accused is arrested, in case, the witness is dead or incapable of giving evidence or his presence cannot be procured without an amount of delay, expense or inconvenience. Therefore, it is duty of the trial Court to seek explanation in this respect from the prosecuting agency. Consequently, after due consideration, I do not find any substance in this

petition which is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil