

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1520 of 2018**

Hemant Kumar Kashyap S/o Aher Singh Kashyap Aged About 62  
 Years Occupation Service, R/o Bilaspur Ward No. 1, District Bilaspur  
 Chhattisgarh, District : Bilaspur, Chhattisgarh --- **Petitioner**

**Versus**

1. The State of Chhattisgarh through the District Magistrate Jashpur,  
 District : Jashpur, Chhattisgarh
2. The Station House Officer, Police Station Jashpur District Jashpur  
 Chhattisgarh. --- **Respondents**

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| For Petitioner | : | Mr. A.K. Prasad, Advocate          |
| For the State  | : | Mr. Chandresh Shrivastava, Dy.A.G. |

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board****16.01.2019**

1. The present petition is to quash the proceedings of FIR and that of Criminal Case No.111 of 2017 pending before the CJM, Jashpur as also the order dated 19.07.2018 against the framing of charge passed in Criminal Revision No.16/2018 whereby the learned Sessions Judge affirmed the order of framing of charge dated 19.06.2018 passed by the JMFC, Jashpur in Criminal Case No.111/2017.
2. It is contended that one Bolero vehicle bearing Regn.No. M.P. 05-BA-0176 met with an accident on 03.01.2014 whereby one Gomti Bai Yadav died. Subsequently the FIR was lodged and while investigation Raghvir Prasad who was driver of the vehicle had produced the licence bearing No. C.G.12/ 20080006296 along-with Insurance Policy. In the license the

validity was recorded from 04.01.2008 to 03.01.2019. Initially the license was issued from RTO Korba which was later renewed from Jashpur. Subsequently during investigation, it was revealed that the said license was actually in the name of one Rama Krishna Yadav and the driving licence number of Raghvir Prasad is C.G.12/ 2008/ 0006292 which was valid from 04.11.2008 to 03.11.2018 thereby the license was not valid on the date of accident i.e., 03.01.2014. It is alleged that Raghvir Prasad in connivance with petitioner Hemant who was the RTO Jashpur hatched conspiracy and got a license issued bearing No. C.G./2008/0006296 so as to get exonerated in criminal case as also to avoid claim if any made by the claimants. Subsequently the charges were framed against Raghbir Prasad along-with petitioner under sections 465, 470, 471 & 120-B of IPC.

3. Learned counsel for the petitioner would submit that the application for renewal of license was given before the petitioner on 04.01.2014 and inadvertently the licence bearing No. C.G./2008/0006296 was issued. After the licence was renewed subsequently an application was given in the year 2015 that the said license no. C.G./2008/0006296 be corrected as C.G./2008/0006292 which was the original number of license. The same was corrected and eventually the license of C.G./2008/0006296 was corrected to be C.G./2008/0006292.
4. Learned counsel for the petitioner submits that the entire course of action would show that the petitioner who was discharging his duties in the capacity of RTO was not in any

way involved in the case. He submits that sometimes it may happen wherein due to inadvertence wrong licence may be issued, however, when the application was filed, it was corrected and the officer of RTO cannot be aware of the accident of a particular person, therefore, prima facie involvement cannot be attached.

5. Perused the documents. A perusal of the documents would show that the accident occurred on 03.01.2014. Subsequently, on 04.01.2014 an application was filed for renewal and while the seizure of licence was made, licence no. C.G. 12/2008/ 0006296 was produced which was found to be fake. The submission of such fake license may have a larger implication in criminal case and also the claim case if any filed by the legal heirs of the deceased. What was the mens-rea of the petitioner at this stage cannot be evaluated as it is the matter of evidence.
6. Certain developments with series of facts in short period of time in between had happened. In this case, the validity of licence expired on 03.11.2013, the accident occurred on 03.01.2014 and application for renewal of license was given on 04.01.2014. Therefore, suspicion of cloud looms large.
7. 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.”

8. 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)*
9. 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 ?

10. The Scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C., was again reiterated by their Lordship in case of *State of Rajasthan Vs. Fatehkaran Mehdu, reported in AIR 2017 SC 796*. It is stated that at the stage of framing of 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.
11. Applying the aforesaid principles in this case, after going through the documents, defence adduced by the petitioner cannot be accepted as gospel truth and he will be at liberty to confront the witnesses with the necessary documents at the stage of evidence when the witnesses are cross-examined.
12. Therefore, in view of the foregoing 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**