

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 902 of 2019**

- Durgesh Patle S/o Late Aatma Ram Patle Aged About 21 Years R/o Village- Nariyara, Police Station- Mulmula, Civil And Revenue District- Janjgir-Champa (C.G.),
- Govinda Tandan S/o Shri Ram Gopal Tandan Aged About 25 Years R/o Village- Nariyara, Police Station- Mulmula, Civil And Revenue District- Janjgir-Champa (C.G.)

---- Applicants**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station - Pamgarh, Civil And Revenue District - Janjgir-Champa (C.G.)

---- Respondent

For Applicants	: Shri P.M.Shriwas, Advocate
For Respondent /State	: Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****22/08/2019**

This criminal revision under Section 397/401 of Cr.P.C. has been filed by the applicant against the order dated 04.07.2019 passed by the Third Additional Sessions Judge, Janjgir, district Janjgir-Champa in S.T. No.36/2019 by which charge under Sections 436/34 and 307/34 of IPC has been framed against the applicants.

2. Brief facts of the case are that in the intervening night of 28.01.2019, when complainant Vandana Tandon and the neighbours were sleeping, some unknown persons have set their house on fire

after pouring petrol. Report was lodged by the complainant at the concerned police station and during investigation, the applicants were found involved in the crime in question and charges were framed against them under Sections 436/34 and 307/34 IPC. Hence, the present revision.

3. Counsel for the applicants submits that the trial court has failed to see the facts and circumstances of the case and has wrongly framed charges under Section 436/34 IPC against the applicant which is entirely against the law and therefore the same is liable to be set aside. He submits that due to some previous animosity, a false complaint has been made against the applicants. He submits that in the entire charge sheet, there is no material available on record to frame charges against the present applicants for the offence under Section 436/34 IPC and as such, learned Additional Sessions Judge has committed illegality in framing charges against the present applicants. As per definition of Section 437 IPC, motive of the offender is must but in this case report has been lodged about setting the house on fire by pouring petrol but due to malafide intention of the prosecution authority, FIR has been lodged with a long delay and therefore no offence has been made out against the applicants. He further submits that as per the definition of Section 436 IPC, presence of offender at the place of incident is also must but in the present case, report has been lodged after a delay of three months.

4. On the other hand, learned counsel for the State submits that there is sufficient material available on record for presuming that the applicants have committed the offence and as such there is no

illegality in the order impugned framing charges against the applicants warranting interference by this Court.

5. Heard counsel for the parties and perused the material on record.

6. In **Ram Kishore vs. State and Ors., RLW 2008 (3) Raj 2440**, it has been held that at the stage of framing of charge, the Court is merely required to evaluate the materials and documents on record with a view to finding out if the facts emerging there-from taken at their face value, disclose the existence of all the ingredients constituting the alleged offence.

7. It is clear from the charge sheet and statements of the witnesses that prima facie case is made out against the applicants. Framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. It has been held by Hon'ble Apex Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Another reported in (2012) 9 SCC 460**, which reads 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 exercise 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 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.”

8. The trial Court after considering the record of case and documents submitted therewith, and hearing the parties shall frame charge if there are grounds for presuming that accused has committed the said offence. In the light of the above, after going through the records in proper perspective, this Court is of the opinion that the Trial Court has rightly taken into consideration the *prima-facie* view of the matter and has undoubtedly applied its judicial mind while passing the impugned order, taking into consideration, the

material on record, while coming to the conclusion of framing the charge against the petitioner. Thus, it cannot be said at this stage that the conclusion arrived at by the Trial Court is unreasonable or unjustified calling for the interference of this Court in exercise of revisional jurisdiction.

9. I do not find any infirmity or flaw in the impugned order passed by the Trial Court. Accordingly, the petition is dismissed.

Sd/-

(Rajani Dubey)
Judge