

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 901 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- Mulmula, Civil And Revenue District- Janjgir-Champa (C.G.)

---- Respondent

For Applicants	: Shri P.M.Shrivas, Advocte
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.38/2009 by which charge under Section 436/34 of IPC has been framed against the applicants.

2. Brief facts of the case are that on 15.02.2019 complainant Sandeep Kumar Banjare has lodged a report at the concerned police station alleging that on 19.11.2018, in the night after taking meals,

when they had gone to sleep, at about 1.40 am, on hearing the noise, they came out and saw the motorbikes standing in the verandah were set on fire. During investigation, the applicants were found involved in the crime in question and charges were framed against them under Section 436/34 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 436 IPC, motive of the offender is must but in this case report has been lodged about setting the vehicles on fire 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. 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.”

7. 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, the trial court has framed charges against the applicants, finding prima facie material against them. Hence, there is no illegality in the order impugned. I do not find any strain reason to interfere with the proceedings of the court below. Revision thus, has no merits and the same is accordingly dismissed.

Sd/-

(Rajani Dubey)
Judge