NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1059 of 2018

Order Reserved on : 29/07/2019

Order Delivered on : 20/09/2019

- Dhanesh Kumar Nishad S/o Shri Nikhad Ram, about 34 years, R/o Bajrang Chok, Durg, District Durg (C.G.)

---- Petitioner

Versus

- State of Chhattisgarh Through : Station House Officer, Police Station – Tadoki, District North Bastar, Kanker (C.G.)

---- Respondent

For Petitioner : Shri Om Prakash Sahu, Advocate.
For Respondent : Shri Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey

C A V Order

20/09/2019

01. The present revision petition is directed against the order dated 07.07.2018 passed in Special Case No.11/2018 by Special Judge, North Bastar, Kanker, whereby the learned Special Judge has framed charges against the petitioner under Sections 420/34 IPC, Sections 4, 5, 6 of the Prize Cheats and Money Circulation Schemes (Banning) Act, 1978 (for short 'the Act, 1978) read with section 34 IPC and 6 & 10 of The Chhattisgarh Protection of Depositors Interest Act, 2005 (for short 'the Act, 2005) read with section 34 IPC.

02. At the time of framing of charges, the petitioner objected the same on the ground that the prosecution has not followed the prescribed procedure of Section 10 of the Act, 2005, and therefore, no case is made out against him, but the learned Court below framed the charges under Sections 420/34 IPC, Sections 4, 5, 6 of the Act, 1978 read with section 34 IPC and 6 & 10 of the Act, 2005 read with section 34 IPC. Hence, this revision.

03. Learned counsel for the petitioner submits that the finding of the learned Special Judge is erroneous, illegal and contrary to the law, which is liable to be set aside. He also submits that statement of witnesses recorded during the course of investigation is not sufficient to frame charges against the petitioner and it nowhere shows that the petitioner with intent to cheat Devraj Patel and other persons whose names find place in charge No.1 incited any person alluring them after the investment made by them in JSB Real Infra Limited in the different scheme of the company. He further submits that the petitioner never allured or cheated the complainants that their money would be doubled or tripled in five years or in seven years, grant land and also not forced them to purchase the certificate (Bond Paper), and as such, his act do not fall within the ambit of Section 420 IPC, which the Special Court failed to appreciate. He also submits that generally the charge is framed on the basis of prima-facie evidence against the accused but in the present case it has

not been established that the petitioner was involved while the investment was being made by the complainants, therefore, the order of framing of charges is not in accordance with law. It is next submitted that there is no evidence that the petitioner compelled or propelled the complainant for investment in the company on false promise by the working agent of the company and prima-facie, no offence is made out against the petitioner. He also submits that the petitioner himself was the investor in the company and fraudulently he has been made Director of the company from 15.03.2015 to 16.07.2015, and he resigned from the post of Director of the company on 16.07.2015 when he came to know about the irregularity and fraud being committed by other members of the company. It has been also submitted that the incident is said to have taken place in the year 2014 and the FIR has been lodged on 21.03.2017 i.e. after three years and there is no proper explanation with regard to delay. Next submission is that the petitioner himself submitted a notice before the Registrar and Firm Company, Bilaspur and New Delhi on 02.05.2016, on the basis of which, Joint Director (Enquiry) wrote a letter to Registrar of Company-cum-Official Liquidator for deletion of name of Director from M/s JSB Infra Limited Company. The petitioner being the Investor, has also filed a civil suit before the Court of 2nd Civil Judge, Class-II, Durg for declaration of injunction and compensation. Thus, the impugned order dated 07.07.2018 may kindly be set aside.

04. On the other hand, learned counsel for the State supporting the impugned order submits that in charge sheet, prima-facie the case is made out against the petitioner and the Court below has rightly framed the charges against the petitioner.

05. Heard learned counsel for the parties and perused the material available on record.

06. The first objection of learned counsel for the petitioner is that as the charge sheet was not filed by the competent authority i.e. District Magistrate, no case is made out against the petitioner under Section 10 of the Act 2005. This Court, vide order dated 11.09.2019 passed in CRR No.34/2018 and other connected cases, has held that the learned trial Court has wrongly interpreted Section 7 of the Act, 2005, which was only for attachment of properties and not for criminal trial. Further, Section 13 of the Act, 2005 empowers the Special Court to take cognizance of the offence without being committed the case to it. Thus, this Court do not find any force in the argument of learned counsel for the petitioner that no case is made out against the petitioner under Section 10 of the Act, 2005.

07. The law relating to framing of charges has been considered by the Supreme Court in the matter of ***Sajjan Kumar V. Central Bureau of Investigation***[1]**,** para 21 of the same reads thus:-

1 (2010) 9 SCC 368

*“**21.** On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge :-*

(i) The Judge while considering the question of framing the charges under Section 227, Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test of determine prima facie case would depend upon, the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) 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.

(v) At the time of framing of the charges, the probative value to the material on record cannot be gone into but before framing a charge 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.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offnece. For this limited purpose shift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution stages as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

08. Further, the Hon'ble Supreme Court, in the matter of ***Om Wati (Smt.) & another V. State & others***[2], has been pleased to caution the High Courts while interfering the petition with regard to framing of charges, para 8 thereof reads thus:-

"8. This Court in xxx vs. xxx cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice

2 (2001) 4 SCC 333

staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed."

09. Again, Hon'ble the Supreme Court has held in the matter of ***Munna Devi Vs. State of Rajasthan and Another***[3] 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.

10. A bare perusal of the document goes to show that the petitioner was posted as Director in the M/s JSB Real Infra India Limited Company at the time when alleged fraud is said to have been committed, and in the FIR as also in the statements of witnesses, his name finds place. Learned counsel for the petitioner has admitted that the petitioner was

3 (2001) 9 SCC 631

also investor in the Company and he himself has reported against the Company before different forum. The evidence further goes to show that he was Director in the Company, may be in the form of investor. At the time of framing of charges, if the trial Court forms an opinion that there are no sufficient grounds for proceeding against the accused the Court discharges the accused after recording its reasons, but if there are prima-facie case against the accused, the trial Court is required to consider whether there are sufficient ground to proceed against the accused. Section 227 of the Cr.P.C. provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228.

11. The aforesaid material aspect of the matter is sufficient for framing charges against the petitioner and this Court do not find any fault in the impugned order dated 07.07.2018 warranting interference by this Court.

12. In view of the aforesaid discussion and in view of judgments of Hon'ble the Apex Court in the matters of **Sajjan Kumar (Supra)**, **Om Wati (Supra)** and **Munna Devi (supra),** the revision petition is liable to and is hereby dismissed. However, liberty is given to the petitioner to raise his objections at the time of final hearing of the matter.

Sd/-
(Rajani Dubey)
JUDGE

Vijay