

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1067 of 2018**Order reserved on : 23.07.2019Order delivered on : 30.08.2019

- Gulam Mohammad S/o Late Shri Peer Mohammad, aged about 64 years, R/o Vidya Nagar, Indira Colony, near Water Tank, Tarbahar, Bilaspur, District Bilaspur (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : The Police Station Economic Offence Wing, Raipur (C.G.)

---- Respondent

For Petitioner	:	Shri Rajat Agrawal, Adv.
For Respondent/State	:	Shri R.S. Baghel, Dy. A.G.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****30/08/2019**

01. This revision has been filed against the order dated 20.08.2018 passed by the Special Judge (Prevention of Corruption Act), Bilaspur in Sessions Trial No.03/2018, whereby the learned trial Court has rejected the application filed under Section 91 of Cr.P.C. and fixed the case for framing of charges.

02. Brief facts of the case are that, before the Special Judge, Economic Offence Wing (for short 'EOW'), Raipur, filed the

charge sheet under Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act'). Thereafter, the matter was fixed for argument on framing of charge. The accused/applicant filed an application under Section 91 Cr.P.C. and prayed that previously one complaint was registered against him bearing Crime No.09/2008 and after investigation and preliminary inquiry, the police of police station EOW reached to conclusion that no offence was made out against the applicant and the EOW sent that case for closure report. Again in the year 2016, on the basis of same allegation, a fresh crime was registered against the accused/applicant vide Crime No.33/2016. By the instant application this application, the accused/applicant wants to call all the records pertaining to Crime No.09/2008. The learned trial Court, after hearing the arguments of both the parties, rejected the application of the accused/applicant and fixed the case for argument on charge. Hence, this revision.

03. Learned counsel for the applicant submits that it is admitted by the prosecution agency that previously a Crime No.09/2008 was registered against the applicant but in that crime number a closure report was sent, but the prosecution agency again on the same ground registered another Crime No.33/2016 against the accused/applicant and filed the charge sheet. He further submits that before charge, the accused/applicant wanted to file all relevant material and records before the learned trial Court but the learned trial

Court rejected his application on the ground that at the stage of framing of charges, applicant's application is not tenable. He also submits that there is double registration of crime against the applicant on same set of evidence and allegation, hence, the first crime number, its investigation and record related with the first Crime No.09/2008 is necessary for just and proper disposal of the present trial. It will have same effect and merits of the present case. He also submits that it is well settled principle of law that a person shall not be sent for double trial and double punishment under the same crime, until and unless the record of Crime No.09/2008 is called in the Court. Under Article 21 of the Constitution of India, it is a valuable right of the accused. Hence, the application filed by the applicant may be allowed and the impugned order may be set aside.

04. On the other hand, learned State counsel supporting the impugned order submits that the order impugned is just and proper and does not call for any interference by this Court.

05. I have heard the learned counsel for the parties and perused the record.

06. The learned trial Court, in its order dated 20.08.2018, relying upon the decision of Hon'ble Supreme Court in the matter of State of **Orissa V. Debendra Ram Padhi¹**, rejected the application of the applicant.

07. The law relating to framing of charges has been

¹ (2005) 1 SCC 568

considered by the Supreme Court in the matter of **Sajjan Kumar V. Central Bureau of Investigation**², para 21 of the same reads thus:-

“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

² (2010) 9 SCC 368

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 offence. For this limited purpose shift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states 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. In the present case, the prosecution agency admitted that in the matter (Crime No.08/2009) some investigation was conducted against the applicant and the closure report was sent, but the present crime (Crime No.33/2016) was registered after seven years on the new information, but the learned trial Court did not consider this reply in its true perspective. Thus,

considering the aforesaid facts and circumstances of the case, and further considering the law laid down in **Sajjan (supra)**, it would be appropriate in the interest of justice to afford an opportunity to the applicant.

09. In the result, the impugned order dated 20.08.2018 is set aside. The application filed by the applicant under Section 91 Cr.P.C. is allowed. The trial Court shall afford sufficient and proper opportunity to the applicant for hearing on the point of framing of charges against him. The trial Court shall also call for all relevant documents which have been mentioned in the application. The Prosecution agency shall also file all the relevant documents before the trial Court.

10. The revision is allowed to the extent indicated above.

Sd/-

(Rajani Dubey)
JUDGE