NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 905 of 2016

Order Reserved on : 19.07.2019

Order Delivered on : 11.09.2019

- Smt. Suman Dheer wife of Shri B.K. Dheer (Director of Gyan Ganga Education Institute Pvt. Ltd.), aged about 70 years, R/o MIG-19, Indrawati Colony, Raipur, District – Raipur (C.G.)

----Applicant

Versus

1. Sachin Shandilya S/o late Upenra Shandilya, aged about 45 years, R/o S-25, Rajiv Nagar, Raipur, Police Station – Civil Lines, Raipur, District Raipur (C.G.)
2. Smt. Manju Shandilya W/o late Upendra Shandilya, aged about 72 years, R/o S-25, Rajiv Nagar, Raipur, Police Station – Civil Lines, Raipur, District – Raipur (C.G.)
3. Smt. Rajkumari Kanda W/o Shri Mohan Lal Kanda (wrongly mentioned as B.K. Dheer), aged about 72 years, R/o MIG-19, Indrawati Colony, Raipur, Police Station – Civil Lines, Raipur, District – Raipur (C.G.). Permanent resident at E-3, Shankar Nagar, Near Bus Stop 6 ½, Bhopal, Post Station – Govindpura, District – Bhopal (M.P.)

---- Respondents

For Applicant	:	Shri Kishore Bhaduri and Shri Roop Naik, Advocates.
For Respondents 1 & 2	:	Shri Sunil Pillai, Advocate.
For Respondent No.3	:	Shri Sumit Raghuwanshi, Advocate

Hon'ble Smt. Justice Rajani Dubey

C A V Order

11/09/2019

01. This revision is directed against the order dated

12.08.2016 passed by 2nd Additional Sessions Judge, Raipur, in Criminal Revision No.26/2016, whereby the order dated 22.12.2015 passed by Judicial Magistrate First Class, Raipur, in Criminal Case No.400/2010 has been set aside and respondent Nos. 1 and 2 have been discharged from the offence under Sections 420, 467 and 468 IPC.

02. Brief facts of the case are that on 24.09.1998, applicant and respondent No.3 herein filed a complaint case under Section 200 of Cr.P.C. against respondent Nos. 1, 2 and other persons to punish them for the offence punishable under Sections 420, 409, 467, and 468 IPC. According to the complaint, B.K. Dheer, husband of complainant No.1-Suman Dheer was Govt. employee where he came into close contact with late Shri Upendra Shandilya, father of respondent No.1-Sachin Shandilya. Shri B.K. Dheer, and late Shri Upendra Shandilya were working in the same department, from where their relations became very close and dear whereof the relations with the complaint became like family. After superannuation, late Shri Upendra Shandilya, father of respondent No.1, put a proposal before Shri B.K. Dheer for running an educational institute for business purpose jointly and in partnership and the same was admitted by the complainants and acceptance was given. After being mutually consented, they opened an education company styled as 'Gyan Ganga Academy' and complainant Suman Dheer (petitioner herein) invested total Rs.6,00,000/- (Rs. Six Lac

only) in several installments and Smt. Rajkumari Kanda (R-3) invested Rs.3,00,000/- (Rs. Three Lac only) for opening the company in partnership. To add more people with the company, accused Ravindra Pal Singh was also included in the company and agreement with regard to the organization, income & expenditure and inserting conditions relating to the shares was executed, which was signed jointly by complainants as well as by late Shri Upendra Shandilya in the capacity of the Chairman and accused Shri Ravindra Pal Singh. With the passage of time, the name of the company 'Gyan Ganga Academy' was changed and named as 'Gyan Ganga Education Institute Private Limited' and changed the earlier issued cheques given by the complainants under the name of Gyan Ganga Education Institute and the complainants were also appointed as members of the organizing committee of the above mentioned company.

03. After coming into existence of the company, it was agreed that the interest on the money invested prior to 1995 by the complainants would be given and thereafter interest and share of the income obtained from the company would be given after 1995. After the death of Shri Upendra Shandilya, Chairman of the above company, his son Sachin Shandilya, respondent No.1, and accused Shri Ravindra Pal Singh took over the charge of organization and Shri Sachn Shandilya was given grade of Director by accused Ravindra Pal Singh without any meeting, acceptance and information to the

complainants, and in that capacity he ignored the rights of complainants as Directors and accused Laxmi Narayan Shandilya was appointed as Chairman of the Company ignoring the rules of the company and interest of the complainants. Complainants are the member of organizing committee of the company. It was also alleged that the accused persons were never followed the condition of the agreement and the documents relating income and expenditure of the company was kept confidential by the accused persons and on being pressurized, the accused persons showed unnecessary and false bills committing cheating with complainants. The accused persons collected money from the students under the heads Mess, Hostel, Cleanliness, Sports and School Building Development and misappropriated lacs of rupees. Further, without the consent of the complainant and without calling the meeting of organizers and without giving information to the complainants, the accused persons had transferred three buses to the Branch of the said company at Bhopal with intent to show loss to the interest of the complainants from the income of the company.

04. The complainants are members of the organizing committee of the Company, had spent huge amount to establish it and are entitled to receive income from the company, but no amount has been given to the complainants till date by the accused persons and with intent to tell

expenses in the said company and to have similar accounts of the company, costly luxury cars and buses at the name of the said company have been told to be purchased which are being used by the accused for their own luxury. Due to aforesaid illegality being committed by accused, the notice was sent in the capacity of the organizing committee of the said Gyan Ganga Education Institute by the complainants through Advocate. In reply to the notice, the attempt is being made to remove the complainants from organizing committee of the company and the establishment of the company was denied from the execution of the said agreement. Being aggrieved by the aforesaid act of accused persons, the complainants and respondent Nos. 3 filed a complaint under Section 200 Cr.P.C. against respondent Nos. 1, 2 and other persons.

05. On 24.09.1998, the statement under Section 200 Cr.P.C. of the complainant No.1 has been recorded. On 19.03.1999, the statement under Section 200 Cr.P.C. of the complainant No.2 and witness No.3 Mohan Lal have been recorded. Prior to registration of the case, the learned trial Court directed to police Station to conduct inquiry of account of the company through gazetted police officer and chartered accountant. On 23.05.2000, the application under Section 91 Cr.P.C. was allowed and directed to submit the account and documents of the Gyan Ganga Education Society Private Limited before the Director and Chartered Accountant. On 04.05.2001, the objection of the accused persons was rejected and the learned

trial Court directed the police station Mandir Hasaud to inquire into the case with the help of Shri Rakesh Ghodi and Shri R.K. Singhaniya, Chartered Accountants. The accused persons had filed Criminal Revision No.409/2001 before this High Court. On 10.05.2007, the revision petition has been decided by this High Court. The learned trial Court has followed the directions of this High Court and directed the officer in charge of the police station, Urla to conduct the inquiry with the help of Chartered Accountant, vide order dated 23.06.2008, but the accused persons neither produced any documents/accounts nor co-operated the police and Chartered Accountants. In the trial Court, on 17.09.2008, 23.07.2008, 28.07.2008 and 14.08.2008, an opportunity was afforded to inquire into the matter but the accused persons did not follow the court's order.

06. On 10.09.2008, the trial Court registered the case against the accused persons for the offence punishable under Sections 420, 467 and 468 IPC. Respondent Nos. 1 and 2 and Ravindra Pal Singh/accused had filed anticipatory bail application vide MCRCA No.706/2008 before this High Court, which was rejected on 15.07.2009. The Gyan Ganga Education Institute (Private) Limited and Gyan Ganga Education Academy had filed Criminal Revision No.554/2008 before the High Court against the order dated 23.07.2008 and 23.06.2008 directing the police to verify the accounts of the applicants/Institution with the help of Chartered Accountant

Joglekar & Maitra Co. and C.K. Nanda & Co. On 16.09.2008, the said revision has been dismissed by this High Court. Respondent Nos. 1, 2 and Ravindra Pal Singh had filed S.L.P. (Cr.) No.5113/2009 before Hon'ble Supreme Court for grant of anticipatory bail, which was allowed directing the accused persons to submit accounts and documents etc. before the Chartered Accounts and also liberty was granted to the complainants and accused persons to submit documents for inquiry. During pendency of Special Leave Petition (Cr.) No.5113/2009, respondent Nos. 1, 2 and accused Ravindra Pal Singh had filed Criminal Miscellaneous Petition No.116/2010 before this High Court against the order dated 10.09.2008 passed by the learned trial Court, whereby the trial Court registered the case against the accused persons for the offence punishable under Section 420, 467 and 468 & bailable warrant was issued against non-applicant.

07. On 23.10.2013, the said petition has been dismissed by this High Court. Pursuant to the direction of Hon'ble Supreme Court in SLP (Cr.) No.5113/2009, the learned trial Court appointed Chartered Accountant M/s Joglekar Maitra & Company to verify the entire records of the company. The accused persons had supplied some documents and the complainants had supplied all the relevant documents to the learned trial Court. The documents so supplied by the accused as well as by the complainants, were supplied to the Chartered Accountants M/s Joglekar Maitra & Company. On

14.03.2014, the said Chartered Accountant firm submitted its report before the learned trial Court. According to the report of Chartered Accountants, all the allegations levelled against accused persons have been found to be proved. Thereafter, the applicant had filed CRMP No.1084/2015 before this High Court for direction to the Court below for expeditious trial. On 15.02.2016, the High Court allowed the said petition and directed the learned trial Court to dispose of the matter as expeditiously as possible preferably within three months. On 21.01.2013, respondent Nos. 1 and 2 had filed application under Section 245 Cr.P.C. with 20 annexed documents.

08. On 12.04.2013, the applicant filed reply to the application under Section 245 Cr.P.C. stating therein that there is sufficient evidence on record, hence, the case has been registered and charges have not been framed upon the accused, which may be decided after taking evidence prior to framing charges. The learned trial Court dismissed the application of respondents on 22.12.2015. The respondent Nos. 1 and 2 filed revision petition before the learned Sessions Judge, Raipur. On 18.05.2016, non-applicants No. 1 and 2 had prayed for time to file compromise application and the case was fixed for further hearing and on 12.08.2016, all of a sudden, the impugned order dated 12.08.2016 has been passed without giving any proper opportunity of hearing. The learned 2nd Additional Sessions Judge discharged respondent No.1 and 2 from the offence under Sections 420, 467 and 468

IPC. Hence, this revision petition.

09. Learned counsel for the applicant submits that the impugned order dated 12.08.2016 is bad in law and is liable to be set aside. The learned Court below ought to have considered the provisions/chapter XIX of Cr.P.C. The procedure for taking evidence prior to framing charges has not been started, hence, the application under Section 245 of Cr.P.C. filed by the resident Nos. 1 and 2 is premature and not maintainable. He further submits that the learned Court below has failed to consider the allegation of the complainants and evidence available on record, which clearly discloses all ingredient of the offence under Section 420, 467 and 468 of IPC. The learned Court below has intentionally not discussed the report dated 14.03.2014, which has been prepared and submitted by Joglekar Maitra & Company as per the direction of Hon'ble Supreme Court passed in SLP (Cri.) No.5113/2009. He also submits that the learned Court below has wrongly considered the documents submitted by respondent Nos. 1 and 2 at the time of deciding the application filed under Section 245 Cr.P.C. On 22.12.2015, the application filed under Section 245 Cr.P.C. has been dismissed by the learned trial Court by giving well reasoned finding which has been wrongly set aside by the learned Additional Sessions Judge. He also submits that the learned Court below has not recorded any mandatory reasons as per requirement of Section 245 Cr.P.C. while passing the impugned order and also not perused the

record whether the evidence prior to framing charges has been completed or not. As per the evidence on record, it is clearly shows that the accused persons have committed forgery and manipulated the documents and also they have taken benefit by preparing forged documents. It is next submitted that on 18.05.2016, non-applicants/respondents No. 1 and 2 had prayed for time to file compromise application and case was fixed for further hearing an on 12.08.2016, all of a sudden, the impugned order has been passed without giving any proper opportunity of hearing. Thus, the impugned order deserved to be set aside. In support of his argument, he placed reliance on the decisions of Supreme Court in the matter of ***Ajoy Kumar Ghosh V. State of Jharkhand and Anr.[1], State of Tamil Nadu by Inspector of Police Vigilance and Anti Corruption V. N Suresh Rajan and Others[2], State of Rajasthan V. Fatehkaran Mehdu[3], Hem Chand V. State of Jharkhand[4], R.S. Nayak V. A.R. Antulay and Anr.[5], Devender Kumar Singla V. Baldev Krishan Singla[6], State through Inspector of Police V. A. Arun Kumar and Anr.[7], K.G. Premshankar V. Inspector of Police and Anr.[8]*** and on the decision of this Court in the matter of ***Sarvesh Dheer V. Smt. Manju Sandilya & Ors***

1 (2009) 14 SCC 115
2 (2014) 11 SCC 709
3 (2017) 3 SCC 198
4 (2008) 5 SCC 113
5 1986 CRI. L.J. 1922
6 (2005) 9 SCC 15
7 (2015) 2 SCC 417
8 AIR 2002 SC 3372

passed in ***Cr. Revision No.105/2013.***

10. Learned counsel for respondents No.1 and 2 supporting the impugned orders submits that the learned trial Court passed well reasoned order, which does not call for any interference by this Court. He placed reliance on the decisions of Hon'ble Supreme Court in the matter of ***Regional Director, Southern Region, Ministry of Company Affairs, Chennai V. Minoo R. Shroff, Chairman, Raymond Ltd, Mumbai and Ors.*** ***(Criminal Revision No.1305/2005, order dated 24.02.2014),*** and ***Sunil Mehta & Anr. V. State of Gujarat & Anr. (Criminal Appeal No.327/2013 arising out of S.L.P. (CRL.) No.374/2012)***,

11. I have heard learned counsel for the parties and perused the material available on record.

12. The learned Sessions Court, in para 18 of its order dated 12.08.2016, observed as under:-

> *"18. Sequel of events, compels me to draw an inference that the purpose of filing complaints was only for the purposes of using the criminal procedure, as an arm twisting device, as the complainants after prosecuting for around 18 years, on one fine day come before the court and seek withdrawal from prosecution showing their unwillingness to prosecute, as their civil dispute stands settled."*

13. Before the trial Court, complainant witnesses namely Smt. Sumar Dheer (CW/1), Raj Kumari Kanda (CW/2), Mohan

Lal (CW/3) and B.K. Dheer (CW/4) all have clearly stated in their statements that the respondents No. 1, 2 and other accused persons have committed cheating and forgery & misappropriated the fund. On 10.09.2008, the learned trial Court, registered the case against respondent Nos.1 and 2 and other accused persons under Sections 420, 467 and 468 IPC. Against the order dated 10.09.2008, respondents preferred Cr.M.P. No.116/2010, which was dismissed by this Court on 23.10.2013, para 5 thereof, reads as under:-

> *"5. Considering the material produced by the petitioners and the order impugned, I do not find any ground for interference in exercise of extraordinary jurisdiction. Consequently, the petition is liable to be dismissed and the same is dismissed. However, the petitioner is at liberty to take appropriate steps in terms of Section 245(2) of Cr.P.C..*

14. The respondents/accused persons had filed an application under Section 245 Cr.P.C. before the trial Court and on 22.12.2015, the trial Court dismissed the said application on the ground that for framing of charges, the Court has to see only prima-facie material against the accused persons and not on merit aspect of the case and the case was fixed for framing of charges.

15. The Supreme Court, in the matter of ***State of Tamil Nadu (supra),*** held in para 30, 31 and 31.1, which reads thus:-

"30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P.[9]*, in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi)*[10] *: (Sheoraj Singh Ahlawat case, SCC p. 482, para 15)*

"15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.'

31. Now reverting to the decision of this Court in Sajjan Kumar[11] *and Dilawar Balu Kurane*[12]*, relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons*

9 (2013) 11 SCC 476
10 (2008) 2 SCC 561
11 (2010) 9 SCC368
12 (2002) 2 SCC 135

of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

16. Further, this Court, vide order dated 31.10.2017 passed in CRR No.105/2013, has held in para 15 and 16, which reads thus:-

"15. By the impugned order, the only reasons that has been taken into account for discharge of accused persons is this, that they without beign the party of agreement, could not be held responsible for the act committed by their father. In the matter of breach of agreement, private respondents may not be held

responsible but the alleged act of fraud, cheating, forgery and falsification of record are different that has continued after the demise of Upendra Shandilya and after arrival of private-respondent on the seat of the director of the company as alleged. The alleged fraud, cheating, falsification of record etc. has been committed or not is different aspect to be considered on the basis of the material available on record and the required evidence as it is necessary to establish commission of offence of forgery etc. in a specific manner, hence the only reason taken into consideration by the revisional court can not be held as a valid reason for allowing the revision petition and discharging the private respondents.

16. Further it is found that the order dated 17.04.2012, passed by the trial Court is not a well reasoned order, which has been passed in a very casual manner by making vague statement. The order on application under Section 245 Cr.P.C. and the order considering the framing of charge should have been dealt with together by the trial Court. Deciding the application under Section 245 of Cr.P.C. and putting off the case for order on framing charge is not a proper course that should be adopted by the trial Court. The prayer of accused for discharge and consideration on framing of charge have to be taken simultaneously by the trial Court.

17. In the case in hand, the trial Court dismissed the application of accused persons filed under Section 245 Cr.P.c. and fixed the case for framing of charges, rather in the light of this Court's order dated 31.10.2017 passed in CRR No.105/2013, order on application under Section 245 Cr.P.C.

and the order on consideration of framing of charges should have been dealt with together by the trial Court.

18. Thus, in view of aforesaid discussion and in view of decisions of Hon'ble Supreme Court referred herein above and this Court's order dated 31.10.2017, the revision petition deserves to be allowed and it is hereby allowed using extra ordinary jurisdiction of this Court. The impugned order dated 12.08.2016 passed by 2nd Additional Sessions Judge, Raipur and order dated 22.12.2015 passed by the Judicial Magistrate First Class, Raipur, are set aside. The application filed under Section 245 Cr.P.C. is revived to be considered by the trial Court. Trial Court is directed to give opportunities to the party to make submission on framing of charge and on discharge, thereafter, pass reasoned order in accordance with law.

19. Accordingly, the petition stands disposed off.

Sd/-

(Rajani Dubey)
JUDGE

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