

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1246 of 2018**

- Jagdish Tigga S/o Sukhdev Tigga Aged About 25 Years
R/o Uslapur, Bilaspur, Tahsil- And District- Bilaspur,
Chhattisgarh

---- Applicant**Versus**

1. The State Of Chhattisgarh Through Station House Officer, Police Station- Civil Line, Bilaspur, District- Bilaspur, Chhattisgarh.
2. Priyanka Jain S/o Prahlad Chand Aged About 26 Years
R/o Babita Chowk, Phool Chowk Road Raipur,
Mohdapara, At Present R/o Vaisali Height, Minocha
Colony House No. 109, Bilaspur, District- Bilaspur,
Chhattisgarh.
3. Rahul Agrawal S/o Kailash Aged About 22 Years R/o
Mohna Pali Road, In-Front Of Umrao Lal Kailash Chand
Ram Ji, Kharsiya, District- Raigarh, Chhattisgarh. At
Present R/o Kargiroad Kota, Bilaspur, District-
Bilaspur, Chhattisgarh.
4. Gaurav Kumar S/o Madan Prasad Aged About 41 Years
R/o Charcha Colony, District- Korea, At Present R/o
Ashok Nagar Jai Bhawani Hostel, Bilaspur, District-
Bilaspur, Chhattisgarh.
5. Swati Mishra W/o Sanjeev Tiwari Aged About 28 Years
R/o Nayapara Phool Chowk, Bhatreja Gali House No.-
312, Raipur, At Present R/o 1-D-3, Devcirty
Changorabhada.
6. Narendra Tiwari S/o Avdesh Tiwari Aged About 25
Years R/o Near Deepka Government College, Korba, At
Present R/o Flate No. I-1d3 Chouhan Green Vally
Junwani, District- Durg, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. D.R. Minj, Adv.
For Respondent No. 1/State	:	Mr. Akhtar Hussain, PL
For Respondent No. 2	:	Ms. V. L. Soni, Adv.
For Respondent No. 3	:	Mr. Achyut Tiwari,
For Respondents No. 5 & 6	:	None, though notice has been duly served

Hon'ble Smt. Justice Rajani Dubey**Order on Board**

04.09.2019

1. Heard on admission.
2. With the consent of the parties, the matter is heard finally.
3. This revision has been filed by the applicants against the order dated 23.08.2018 passed by the Additional Sessions Judge (FTC), Bilaspur, in Sessions Trial No. 49/2018 whereby learned trial Court framed charges against the applicant under Sections 365, 366, 368, 370 of the IPC and Sections 3, 4, 5, 6 & 9 of Immoral Trafficking (Prevention) Act 1956.
4. Brief facts of the case are that, Police Personnel of Police Station Mahila Thana, Bilaspur conducted raid in 36 City Mall in Amaya Day Spa and some foreigner girls were found there, who had been allegedly there for the purpose of prostitution. They were arrested and some other persons present on the spot were also arrested as deemed to be customer of that so called fleshed trade. The allegation against the present applicant is that he was the manager of Siaura Thai Spa & Saloon, hence it was under his management, the business of prostitution was going on the said Spa. Thereafter, police registered an FIR against the present applicant and respondent No. 2 to 6 bearing Crime No. 05/2018 and after investigation charge-sheet was filed. The learned trial Court framed the charges against present applicant and respondent Nos. 2 to 6 for the offence punishable under Sections 365, 366, 368, 370 of the IPC

and Sections 3, 4, 5, 6 & 9 of Immoral Trafficking (Prevention) Act 1956. Hence, this revision.

5. Learned trial Court, after hearing argument before charge, framed the charges against present applicant and respondent Nos. 2 to 6 for the offence punishable under Sections 365, 366, 368, 370 of the IPC and Sections 3, 4, 5, 6 & 9 of Immoral Trafficking (Prevention) Act 1956. Hence, this revision.

6. Learned counsel for the applicant submits that the impugned order dated 23.08.2018 is passed without application of mind and is being bad in law, could not be sustainable and liable to be set-aside. He next submitted that the learned trial Court instead of discharging the present applicant from the charges, framed the aforesaid charges, therefore, committed error of law, which is liable to be corrected by this Hon'ble Court because there is no seizure of either of goods or cash from the possession of present applicant. In this case there is no material available against the present applicant, the only allegation made by the witnesses against the present applicant is that he helped the so called victim for securing the job in the Amaya Day Spa and Siaura Thai Spa & Saloon, therefore, the impugned order is liable to be set-aside and the applicant is liable to be discharged from all the charges.

7. On the other hand, learned counsel appearing for the Respondent No. 1/State supported the impugned order.

8. Learned counsel for the Respondent Nos. 2 & 3 supported the petition.

9. None for the Respondent Nos. 4, 5 & 6 though notice has been served.

10. Heard learned counsel appearing for the parties and perused the material available with due care.

11. While considering the issue of framing of charge, in **Sajjan Kumar V. C.B.I.**¹, Hon'ble the Apex Court held that *"at the time of framing of charges, 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. 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. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be"*. Hon'ble the Supreme Court in the matter of **Om Wati (Smt) and Another V. State, Through Delhi Admn. And Others**², has held in para 10 as under:-

"10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider

1 (2010) 9 SCC 368

2 (2001) 4 SCC 333

the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in *Satish Mehra v. Delhi Admn.* [(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

"9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

'227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former

section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

12. 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"*.

13. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether prima-facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during

3 (2001) 9 SCC 631

investigation should be the concern of the Court. It, at the stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. Prima facie, it is clear from the statement of the witnesses, memorandum, seizure and documents that applicant is also involved in the crime in question. This Court does not find any illegality or infirmity in the order impugned warranting interference.

14. 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 is liable to and is hereby dismissed at motion stage itself.

**Sd/-
(Rajani Dubey)
JUDGE**