

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 6-3-2019

Order passed on 16-05-2019

CRMP No. 2258 of 2018

1. Kunj Bihari Gupta S/o Roop Narayan Gupta Aged About 40 Years Main Road Surajpur Police Station And Tehsil Surajpur District Surajpur (CG).
2. Manoj Gupta S/o Roop Narayan Gupta Aged About 35 Years R/o Main Road Surajpur Police Station And Tehsil Surajpur District Surajpur Chhattisgarh.
3. Roop Narayan S/o Seetaram Aged About 65 Years R/o Main Road Surajpur Police Station And Tehsil Surajpur District Surajpur Chhattisgarh.
4. Jugal Sahu S/o Svayamber Sahu Aged About 45 Years R/o Village Badkapara ,police Station And Tehsil Surajpur District Surajpur Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh Through District Magistrate Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh
2. Manoj Kumar Agrawal S/o Shri Ram Kishun Agrawal Aged About 40 Years R/o Nehru Park Road Surajpur Police Station And Tehsil Surajpur ,district Surajpur Chhattisgarh.

---- Respondents

For appellants	:	Mr. Kishore Bhaduri, Advocate
For State	:	Mr. Raghavendra Verma,. Govt. Adv .
For respondent No.2	:	None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV Order

1. This petition is preferred under Section 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 6-9-2018

passed by the 2nd Additional Session Judge, Surajpur (CG) in Criminal Revision No.17 of 2018 affirming the order dated 8-3-2018 passed by the learned Judicial Magistrate First Class, Surajpur (CG) whereby the said Court framed charges for offence under Sections 457 and 380 of IPC against the petitioners in a criminal complaint case No.278 of 2017.

2. In the present case, respondent No.2 is complainant who filed a complaint under Sections 457 and 380 of the IPC against the petitioners stating that in the year 1962 father of respondent No.2 took premise on rent from the uncle of the respondent No.3 which is situated at main road, Surajpur and he was running business of book selling in the said premise. It is alleged that on 14-9-2011 at 9.00 pm after closing the shop the complainant went to his house which is situated at Ketka road. On 15-9-2011 at 9.00 a.m., when he came to the shop, he found that lock of the door has already been broken and all the books and stationery items amounting to Rs.12,00,000/- were stolen at the instance of the appellants, therefore, complaint was filed before the trial Court which framed charges against the appellants.

3. Learned counsel for the petitioners would submit as under:

- I) There is civil case pending before the civil court with regard to possession of the

disputed house/land and the complaint was filed only to harass the petitioners.

- ii) The trial court has not considered the statements of the witnesses, Police report while framing of charges against the petitioners.
- lii) Respondent No.2 has failed to produce any receipt of the stolen property and there is no evidence on the basis of which petitioners can be convicted after facing of trial.
- iv) Petitioner No.1 lodged a complaint on 19-9-2011 before the Police Station Surajpur and after investigation Police charge-sheeted the respondent No.2 and thereafter complaint was filed which shows that charges are groundless.
- v) The case is pertaining to abuse of process of law because the same is instituted to harass the petitioners and same is

maliciously lodged, therefore, proceeding should be quashed being prosecution of innocent persons.

4. On the other hand, learned State counsel would support the order passed by the court below.

5. I have heard learned counsel for the parties and perused the record of court below in which the order has been passed.

6. In the present case, from the evidence of Manoj Kumar Agrawal (PW/1), Suresh Chand Agrawal (PW/2), Sunil Agrawal (PW/3) and Anand Kumar (PW/4), it is prima facie established that shop of respondent No.2 was closed on 14-9-2011 in which he was running stationery shop. The said shop was found opened on 15-9-2011 in the morning at 9.00 a.m., and all the stationery and other materials kept in the said shop were missing. As per version of these witnesses, value of material is Rs.12,00,000/-. As per discovery statement of appellant Kunj Bihari and Manoj Gupta, materials were found in the house of the petitioner No. 4 Judgal Sahu. The trial court directed enquiry to the Police Officer and as per report of the City Superintendent of Police Surajpur dated 19-4-2012 all the petitioner are involved in removing the articles from the shop of respondent No.2.

7. For commission of offence under Sections 457 and 380 of IPC, *prima facie* it has to be established that moveable property

was in possession of respondent No.2 which were removed without his consent dishonestly. It is a case of wrongful gain and wrongful loss. In the present case, offence is committed in premise/shop in the night after house breaking, therefore, *prima facie* there is evidence for proceeding with the case under Sections 457 and 380 /of the IPC by the trial Court. The width of the power of this Court under Section 482 of the Code of Criminal Procedure 1973 and Article 226 of the Constitution of India is unlimited whereunder in the interests of justice this court can make such orders as may be required to secure ends of justice and to prevent abuse of the process of any court.

8. The evidence adduced in the present case before the trial Court makes out a *prima facie* case against the petitioners and it is not proper for this court to enter into the realm of appreciation of evidence at the stage of the framing of the charges itself. It is settled law that charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. If *prima facie* no offence is made out against the petitioners, then only it can be said that it is a case of abuse of process of law. In the present case, evidence produced before the trial court clearly makes out a *prima facie* case, therefore, it is not a case where this court can marshal the

evidence because same is not in domain of this court. There is nothing to say that it is a case of abuse of process of law.

9. In view of the above, the petition is liable to be and is hereby dismissed. Record of the court below be sent back immediately for proceeding with the case and to dispose of the same, in accordance with law.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju