

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2431 of 2019****Order Reserved on 14.11.2019****Order passed on 19.11.2019**

Awadhesh Kumar Shukla, S/o Shri Shivshankar Shukla, aged about 36 years,
Residence of Budhwari Bazar Ward No. 4, Sakti, District – Janjgir -Champa
(C.G.)

----Applicant**Versus**

State of Chhattisgarh, Through : Station House Officer, P.S. Janakpur, District –
Korea (C.G.) (non-applicant)

----Respondent

For Petitioner	: Mr. Prakash Tiwari, Advocate.
For Respondent/State	: Mr. H.S. Ahluwalia, Dy. A.G. on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. Heard on admission and I.A. No.1, application for grant of stay.
2. This petition under Section 482 of the Cr.P.C. has been preferred by the applicant/accused calling in question the rejection of his application under Section 239 of the Cr.P.C by the trial Magistrate for discharging him from the offences registered under Sections 409, 420, 467, 468, 471 & 34 of the Indian Penal Code, which was affirmed by the revisional Court by the impugned order dated 23.07.2019 in Criminal Revision No. 26/2019.
3. Learned counsel appearing for the applicant would submit that there is no

material on record against the present applicant to connect the applicant for the aforesaid offences, as such, he ought to have been discharged by the trial Court and charges could not have been framed for the aforesaid offences and the revisional Court has perpetuated the illegality by dismissing the revision filed by the applicant, as such, this petition be admitted for hearing and interim order be granted in favour of the applicant.

4. Shri Ahluwalia, learned Dy. A.G. appearing on behalf of the respondent/State, on advance copy, opposes the petition and application for grant of stay.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

6. The case of the prosecution, in brief, is that the present applicant, along with two accused persons namely Rakesh Kumar Sinha and Khageshwar Prasad Sahu, while working as Assistant Postmaster (Dak Shahayak) from 25.7.2012 to 5.7.2016 in Sub Post Office, Janakpur were found involved in committing fraud in between 6.12.2013 to 19.5.2016 and had made forged withdrawal slips, by which they had withdrawn Rs.1,16,82,332/- from different sources i.e. through Saving bank accounts, from loan accounts and from R.D. accounts and thereby committed the offence under Sections 409, 420, 467, 468, 471 & 34 of the Indian Penal Code.

7. The trial Court, after going through the record of memorandum statement and taking into account the material on record came to the prima facie conclusion that there is sufficient material available on record to frame charges against the petitioner for the

aforesaid offence under Sections 409, 420, 467, 468, 471 & 34 of the Indian Penal Code and thereby framed the charges for the aforesaid offences.

8. The Supreme Court in the matter of **Amit Kapoor Vs. Ramesh Chander**¹ has held as under:-

“ 17. Framing of a charge is an exercise of jurisdiction by the trial Court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is good to proceed against the accused and framed the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a find distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. There is a find distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. At the initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

9. Reverting to the facts of the case in light of the decision rendered by the Supreme

1 (2012) 9 SCC 460

Court the matter of **Amit Kapoor** (supra), it is quite vivid that the trial Magistrate, on the basis of material available on record, has rightly come to the conclusion that there is prima facie material for the proceeding against the applicant for framing charge and it cannot be held that applicant deserves to be discharged from the aforesaid offences. Prima facie satisfaction has been recorded by the learned trial Court while rejecting the application for discharging him and consequently framed the charge against the petitioner for the aforesaid offence, which, in the opinion of this Court, has rightly been affirmed by the revisional court and I do not find it either perverse or contrary to the record.

10. In view of above, I do not find any ground to hold that applicant deserves to be discharged in the instant case. The petition under Section 482 of the Cr.P.C., being devoid of merit, is liable to be and is hereby dismissed. No costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-