

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 300 of 2018

- Lalsai Singh, S/o Bodhwa Gond, Aged About 54 Years, R/o Village Darhora, P. S. Chandaora, District-Surajpur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The District Magistrate, Surajpur, District-Surajpur, Chhattisgarh,.
2. Madan Rajwade, S/o Mahadeo Rajwade, Aged About 50 Years, R/o Village-Darhora, P. S. Chandaora, District-Surajpur, Chhattisgarh.
3. Mahesh, S/o Shivilal, Aged About 30 Years, R/o Village-Darhora, P.S. -Chandaora, District-Surajpur, Chhattisgarh.

---- Respondents

For applicant : Mr. V.K. Pandey, Advocate.
For Respondent/State : Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

23/01/2020

Heard.

1. This criminal revision has been brought challenging the order dated 20.2.2018 passed by the Additional Sessions Judge, Pratappur, District Surajpur (CG) in Criminal Revision Nos.18/2017 & 01/2018 thereby directing framing of charge under Section 409 of the Indian Penal Code (for short 'the IPC') against the petitioner, apart from other offences.
2. It is submitted by the learned counsel for petitioner that the trial Court has rightly framed charges under Section 406 of IPC apart from other offences against this petitioner herein. Respondent No.2 & 3 are the private persons, who have preferred revisions before the Sessions Judge against the order framing charge against the petitioner herein. It is submitted that perusal of the final report/charge-sheet filed in this

case would show that there is no such evidence present against this applicant for being charged under Section 409 of IPC. The applicant is not a 'public servant' as defined under Section 21 of the IPC and even in the course of investigation, the prosecution has not collected any evidence establishing that this applicant was appointed as 'Salesman' of Fair Price Shop. The revisional Court below has not properly appreciated the documents filed along with the revision petitions, which were not available in the charge-sheet and filed for the first time before it. Thus, it is evident that the revisional Court has committed error in directing the trial Court to frame charge under Section 409 of IPC against the applicant also. Therefore, it is prayed that the impugned order be set aside.

3. Learned State counsel opposes the petition and the submissions made in this respect. It is submitted that although there is no documentary evidence regarding appointment of the applicant as a 'public servant', there is sufficient evidence present against him in the charge-sheet showing that he had acted as a 'public servant' i.e. in the capacity of Salesman of Fair Price Shop of the Panchayat. The witnesses have categorically stated in their statements recorded under Section 161 of CrPC that applicant was the Salesman. The applicant is covered under Section 21 (12) (b) of the IPC, which says that every person in service or pay of a local authority, corporation etc. is a public servant. In these circumstances, it cannot be said that any error has been committed by the revisional Court in directing framing of charge under Section 409 of IPC against the applicant. Hence, this revision petition is liable to be dismissed.
4. I have heard both the parties and perused the documents on record.
5. Complainant M.L. Rajwade filed a complaint alleging that Director Geeta, Salesman Lalsai (petitioner) and Secretary Neelu Kushwaha, who were managing affairs of Government Fair Price Shop in village-Darhora, had committed defalcation and financial irregularities between July, 2014 & October, 2014. The said complaint was inquired by the Food Inspector and on the basis of the report submitted, FIR was lodged against this petitioner and others for commission of offence under Sections 420, 34 of IPC and Section 3 read with Section 7 of

Essential Commodities Act (for short 'the Act'). Although FIR was registered for commission of offence punishable under Section 420, 34 of IPC and Section 3 & 7 of the Act, but after completion of investigation, all the accused persons including the petitioner herein were charge sheeted for the offence punishable under Sections 420, 409, 34 of IPC and Sections 3 & 7 of the Act. In the charge sheet, present petitioner has been shown to be the Director of Fair Price Shop, however, in other reports he has been shown as 'Salesman' of the same shop.

6. While considering the question of framing the charge, the learned trial Court charged present petitioner under Sections 420, 406 of IPC & Sections 3 & 7 of the Act, whereas remaining accused persons have been charged under Sections 420, 409 of IPC and Section 3 read with 7 of the Act. Aggrieved by non-framing of charge under Section 409 of IPC against present petitioner, the complainant had filed revision petition which came to be allowed vide order impugned.
7. Perusal of the statements of witnesses reveal that they have stated that the petitioner is the person who used to distribute ration from the Fair Price Shop. The petitioner himself has admitted in his statement that it is he who was responsible for distribution of ration from the Fair Price Shop. Section 21 (12) (b) of the IPC very clearly provides that every person in the service of Local Authority or work on payment for such authority is a public servant. Explanation 1 to Section 21 (12) (b) of IPC clarifies that persons falling under any of the above descriptions are public servants, whether appointed by the Government or not. This Explanation further clarifies that wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. This being the position, the appointment of a person as a 'public servant' by the Government is also not necessary and a person who is in actual possession of the situation becomes a public servant under Section 21 of the IPC.
8. In the light of aforesaid provisions, the position of the petitioner herein appears to be that of a 'public servant', however, the applicant shall

have opportunity to disprove the same in the course of trial, but for the present, I am of this opinion that there is material to show that applicant was holding the position of a 'public servant' and was performing the duties of a 'public servant', which is *prima facie* sufficient ground to frame charge under Section 409 of IPC against him and being so, the order impugned passed by the revisional Court directing framing of charge under Section 409 of IPC cannot be said to be erroneous or incorrect.

9. For the foregoing reasons, the revision petition has no substance, the same is liable to be and is hereby dismissed at motion stage itself.

Sd/-

(Rajendra Chandra Singh Samant)
Judge