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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 15.02.2021

Order Passed on : 16/06/2021

Cr.R. No. 31 of 2021

1. Sudesh Kumar Rai, S/o. Late Jugal Kishore Rai, aged about 52 years, R/o. Ward No. 13, Balram Das Ward, Old Civil Line, Infront of Shukla Aata Chaki, Rajnandgaon, District Rajnandgaon, Chhattisgarh.
2. Narayan Yadav, S/o. Late Jeevrakhan Yadav, aged about 52 years, R/o. Behind Om Cycle, Ward No. 19, Sahdev Nagar, Rajnandgaon, District Rajnandgaon, Chhattisgarh.

---- Applicants

Versus

- State of Chhattisgarh, Through : Station House Officer, Police Station Basantpur, District Rajnandgaon, Chhattisgarh.

---- Non-applicant

For Applicants	:	Mr. Malay Shrivastava, Advocate
For Respondent	:	Mr. Gurudev I. Sharan, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

16/06/2021

1. This criminal revision has been brought challenging the legality, propriety and correctness of the order dated 12.03.2020, passed in Sessions Trial No. 22 of 2019, by the learned trial Court rejecting the application of the applicants filed under Section 227 of the Cr.P.C. praying for discharge.

2. These applicants and others were charge-sheeted for commission of offence under Section 409, 419, 420, 468, 471, 413, 120 (B), 201, 217,

34 of the Indian Penal Code, Section 3 (1), 7 of the Essential Commodities Act, 1955 and Section 66 (c) and 66 (d) of the Information Technology Act.

3. The applicants filed an application under Section 227 of Cr.P.C. stating that they have been falsely implicated in the case as there is no material present in the charge-sheet to show that the applicants have committed any offence as alleged. Although the applicants were members of super checking team, but there is no evidence that super checking team went through any checking or inspecting the documents, on which the team constituted for issuance of new ration card had worked. Hence, these applicants have not played any role in the said commission of offences and none of the offence registered against them is made out. The Additional District and Sessions Judge, Rajnandgaon has passed the impugned order by which, the application under Section 227 of Cr.P.C. was partly allowed and the applicants were discharged for offence under Section 413 of Cr.P.C., however, the case has been remanded to the Court of C.J.M. for trial of the applicants and others for the remaining offences, which are triable by J.M.F.C.

4. It is submitted by the learned counsel for the applicants that initially the FIR was lodged against one Rupesh Joshi and Prahlad Thakur for commission of offence under Section 3 (1), 7 of the Essential Commodities Act, 1955. On the basis of the report submitted by the Inspector Food Civil Supplies Department, Rajnandgaon. There had been no allegation in that report of Food Inspector, against these applicants. These applicants were members of super checking team, which was constituted by the Commissioner Municipal Corporation, Rajnandgaon vide (Annexure A-4) according to which, it was the duty of the applicants to verify the applications, declaration forms. Subsequent

to the verification made by the nodal officer and before that being entered on-line. Other government officers and employees were entrusted with the duties to scrutinize and verifying the application and declaration forms of the persons who had applied for issuance of ration card. Therefore, these applicants were never involved in verifying and scrutinizing the applications and declaration forms of the applicants for ration cards at the first instance. The whole investigation shows that there is no case against these applicants. Relying on the judgment of Supreme Court in case of ***Dipakbhai Jagdishchandra Patel Vs. State of Gujrat & Another***, reported in ***(2019) 16 SCC 547***, it is submitted that the Supreme Court has held that Court is not expected to work as post office, it is the duty of the Court to sift the evidence and draw conclusion, whether the charge is prima-facie made out or not. It is submitted that the learned Additional Sessions Judge has not given consideration on the application and passed the order in mechanical manner. Hence, the revision petition be allowed and the applicants be discharged.

5. State counsel opposes the revision petition and the submission made in this respect. It is submitted that there is prima facie evidence present in the charge- sheet against these applicants. As the applicants failed to perform their duties and connived in the commission of offences, which shows their active participation. Hence, there is no case for discharge.

6. I have heard the learned counsel for the parties and perused the documents placed on record.

7. On perusal of the impugned order, it is apparent that after the discharge of the applicants under Section 413 of I.P.C. charges have been framed against them under Section 409, 419, 420, 468, 471, 217, 120-B, read with Section 34 of the Indian Penal Code and Section 66 (c) and 66 (d)

of the Information Technology Act, 2000 and the matter has been remanded to the Court of Chief Judicial Magistrate, Rajnandgaon.

8. In compliance with the order of the State Government, a drive for verification of the ration cards was conducted. On completion of the same, a report dated 30.06.2014 was submitted by Deputy Collector, Rajnandgaon to Collector, Rajnandgaon, in which it was mentioned that in Ward No.19, the number of total ration cards issued was 904, whereas on verification, only 276 ration cards were found to be genuine and the remaining 628 ration cards could not be verified. The names mentioned in the unverified ration cards were also not found in the list. On finding that, some of the persons mentioned in the unverified ration cards were found living in the vicinity. Query was made from them, who expressed their ignorance about existence of ration cards in their favour. It was on this basis, the complaint was given to the police by Food Inspector, Kamal Narayan Sahu on 02.07.2014. F.I.R. was then registered against Rupesh Joshi and Prahalad Thakur who were the Directors of the Fair Price Shop.

9. It has been submitted by the learned counsel and also not disputed that the applicants were the members of the Super Checking Team, which was constituted by the Commissioner Municipal Corporation, Rajnandgaon vide order dated 23.04.2013 and the duty entrusted to them was to verify the applications and declaration forms before their entry in the on-line portal. But the Investigating Officer has drawn the conclusion in the investigation, which is mentioned in the final report that these applicants being a member of Super Checking Team and being entrusted with duty to verify the declaration forms and applications of the ration card, have either deliberately certified the bogus declarations and applications or they avoided to perform their duty in the manner

they were expected to perform, because of which, the bogus ration cards were made and the same were used for making purchases from the fair price shops, which has caused huge loss.

10. The point for consideration in this revision petition is this that whether the conclusion that has been drawn against these applicants by the I.O. has support of any evidence. On perusal of the complete copy of the charge-sheet that has been filed by the respondent side, it is found that no specific inquiry has been held against these applicants before the F.I.R. was lodged. The complaint given by Food Inspector to the Police also does not mention the name of these applicants, which is the basis of F.I.R. that is lodged on 02.07.2014. It cannot be disputed that these applicants being the member of the Super Checking Committee had cleared the application forms and the declaration forms of the proposed beneficiaries, which was the basis that the ration cards were prepared in the name of the persons, out of which the bulk of such ration cards have been found to be bogus and fictitious. In the investigation made, the memorandum statement of co-accused persons namely Rupesh Joshi, Kamlesh Kumar Dewangan, Jaipal Mangwani, Lomesh Jaiswal, Dilip Giri @ Raju Goswami, Manish Yadav have been recorded under Section 27 of the Evidence Act, in which there is no mention of the names of these applicants to show that they were collaborators with other co-accused persons.

11. A seizure memo of the property seized from the applicant No.1 dated 05.07.2014 is a document of charge-sheet, shows seizure of 343 application forms and declaration forms from the possession of applicant No.1, which by itself is not clear as to in what manner the applicant No.1 was in possession of these applications and declaration forms and whether seizure of these application forms can be regarded

as commission of any of the offences registered against him and the another applicant. Statements have been recorded of Rupesh Joshi, one of the accused and R.K. Fadnavis has been recorded at initial stage in which there is no mention of names of these applicants. Other witness examined namely Bhagwat Jaiswal, does not make any statement against these applicants. Another witness Narendra K. Dugga (Commissioner Municipal Corporations) has stated about the responsibility of these applicants, as he was the person, who had constituted the Super Checking Team. Witness T.K. Verma was Additional Collector, Rajnandgaon, who had stated about the working of the teams constituted for verification of applications for ration cards and also the duties entrusted to the applicants. He has stated that in this case the irregularities have been committed by the main accused Prahalad Thakur, on that basis, it was the fault of these applicants because of which the data entry was made of fictitious details, therefore, these applicants have failed to perform their duties and thus, have committed irregularities.

12. Witness R.L. Khare has given statement about the formal procedure. Other witness J.K. Nigam, S.L. Vishwakarma, Raj Kumar Chaurasia have given statements about the distribution system and there is no allegation against these applicants in their statements. Statement of other witnesses namely Vipin Malik and Om Prakash Sahu, mentions about their contract work of data entry and again they have not stated anything against these applicants. Loknath Sahu, Rajani Andani, Shailendra Mishra, Bal Krishna Mishra, Chandrika Janbandhu have not stated anything against these applicants. Dulasia Sahu was Anganwadi worker and she was also the Member of the team constituted for the making of new ration cards. She has not made any statement against

these applicants. Ku. Rupali Kunjam, Bhujan Singh Ganitram Thakur, Shobhna Mishra, K.P. Dixit, Tikendra K. Sahu, Bisan Agrawal, Goutam Singh, Raja Pansari, Savitri Devi, Manju Joshi, K. Jairavina have also been examined by the Investigating Officer and there is nothing against these applicants in their statements.

13. Dhanna Lal Sahu is another witness, who was assisting the main accused Prahalad Thakur and he has mentioned the name of these applicants as the persons in charge of Super Checking team but there is no allegation against them in his statement. Other witnesses Rupran Sahu, Tarun K. Sahu, Abhijit Hariharno, Prakash Sahrivastava, Ajay Yadav, Ravi Sonwani, Satyanarayan Lautre, Bhupendra Singh Tekam, Suraj K. Yadav, Daman Singh, Smt. Asha Das, Bakrithara Mishra, Jankaran Sahu, Mahendra Singh Mandavi, Zaheer Ahmed Khan, Mahesh Mishra, Vimla Chauhan and Kishore Kumar Sahu have not made any specific statement against this applicant.

14. After perusal of the whole charge-sheet, it is found that departmental witnesses have made statements against these applicants that these applicants either negligently or inadvertently failed in their duty to verify the applications and declaration forms in proper manner because of which the fictitious ration cards have been issued, in the name of such persons, who had not applied for the issuance of ration cards or in the name of the fictitious persons.

15. The applicants have been charged with Section 409 of I.P.C. that is criminal breach of trust by public servant etc. Criminal breach of trust has been defined in Section 405 of I.P.C., in which first requirement is this that a person must have been entrusted with some property or any dominion over property and being in such position he dishonestly misappropriates or converts such property to his own use. In Section

2(C) of Benami Transaction (Prohibition) Act, 1988 property has been defined, as “property of any kind whether movable or immovable or tangible or intangible and includes any rights or interest in such property.

16. After considering on the whole evidence in the charge-sheet, it is found that these applicants were not entrusted with any kind of property which is defined under Section 2(C) of the Act, 1988, the word ‘property' in Section 405 of I.P.C. does not have a different meaning, but only thing that can be taken into consideration is this, that these applicants were entrusted with a duty and responsibility to make verifications of the applications and declaration forms. This duty and responsibility do not come under the definition of property, hence, there seems to be no ground available and no ground in the case is present to frame charge under Section 409 of I.P.C. against these applicants.

17. Section 419 and 420 of I.P.C. are as follows:-

> ***“Section 419. Punishment for cheating by personation.***— Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
>
> ***Section 420. Cheating and dishonestly inducing delivery of property.***—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

18. Section 419 of I.P.C. provides that whoever cheats thereby dishonestly induces the person deceived to deliver any property to any person etc.

has committed such offence of cheating by personation. The only evidence against these applicants is this that he had failed to perform the duty either deliberately or negligently and thus there is nothing to hold that they have impersonated on behalf of any person or have given inducement to any person to deliver any property. Therefore, the charge framed against these applicants under Section 419 of I.P.C. and Section 420 of I.P.C. is found to be baseless.

19. Forgery is defined under Section 463 of I.P.C. which is as follows:-

> ***"Section 463. Forgery.***— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

20. According to the evidence present in the charge-sheet, there is no such allegation that these applicants created any false documents etc. The only allegation present against them is this that they failed to scrutinize and find out that the application forms and declaration forms were in the name of fictitious persons and that the signature on the application forms and declaration forms were forged and thus they failed to perform their duty. Hence, according to the definition of this offence under Section 463 of I.P.C. there is no allegation against these applicants regarding the commission of offence of forgery and intention that forgery was made for the purpose of cheating. The act of forgery and intention to cheating can be attributed to those persons, who may have filed the applications and declaration forms, but not to these applicants according to the evidence that is present in the charge-sheet, therefore, I am of

this view that there is again no material present to frame charge against the applicants under Section 468 of I.P.C.

21. Section 471 of I.P.C. is as follows:-

> ***"Section 471. Using as genuine a forged [document or electronic record].***—Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]."

22. The main ingredient of this offence is that the person accused must know or must have reason to believe that the document is forged. To show that these applicants had knowledge that the applications and declaration forms that were placed were before them for scrutiny were forged or that they had reason to believe so, requires more evidence. On taking into consideration all statements given by all the witnesses, there appears to be no such evidence present given by any witness that these applicants had prior knowledge about the forgery of the documents or that there had been circumstances present which may have been the reason to believe that the documents are forged, therefore, again there is no material found which could have been the basis of framing of charge under Section 471 of I.P.C. against these applicants.

23. Section 217 of I.P.C. is as follows:-

> ***"Section 217. Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture***.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is

to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

24. The offence defined under Section 217 of I.P.C. requires that the public servant had conducted himself of intended to save any person from legal punishment or to save any property for future or any charge.

25. On perusal of the whole evidence present in the charge sheet, it is found that there is no such allegations against that these applicants that they intended to save any person from legal punishment or save any property forfeiture etc. Therefore, there is altogether no evidence present for framing of charge against these applicants under Section 217 of I.P.C.

26. In the discussions made hereinabove, it has been found that there is no material and no prima facie case present for framing charge against these applicants under Section 409, 419, 420, 468, 471 and 217 of I.P.C., therefore, the charge of conspiracy for commission of these offences is not at all made out under Section 120 B of I.P.C.

27. The framing of charge against these applicants under Section 66(c) and 66 (d) of Information Technology Act, 2000 is again without any basis. The evidence in the charge-sheet shows that these applicants were entrusted with responsibility to make scrutiny of the applications and declaration forms and therefore, these applicants are not the persons

who made entry in the computer system, therefore, they are not responsible for the entries that have been made in the computer. Therefore, there was no occasion for them to make use of any electronic signature, password or unique identification for cheating by using the computer resources. There are other accused persons who have been charge-sheeted for commission of such offences. Hence, again, it is held that there is no prima facie case is present in the charge sheet against these applicants for framing charges under Section 66(c) and 66(d) of Information Technology Act, 2000.

28. After considering on all the material present in the charge-sheet and the submissions made by learned counsel from both the sides in this respect and on the basis of discussions made hereinabove and on the basis of the conclusions drawn hereinabove. I am of this view that the impugned order suffers from grave infirmity and illegality, which is liable to the set aside. Hence, this revision petition is allowed, the impugned order is set aside. The application filed by the applicants under Section 227 of Cr.P.C. praying for discharge is hereby allowed and these applicants are discharged from the offences under Section 409, 419, 420, 468, 471, 217, 120 B read with 34 of I.P.C. and Sections 66 (c) and 66 (d) of Information Technology Act.

29. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika