**HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR**

S.B. Criminal Revision Petition No. 1166/2021

Kishanlal Saini S/o Shri Sadhuram Saini, Resident Of New Friends Colony, Police Station Aravali Vihar, Alwar (Rajasthan)

----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

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| For Petitioner(s) | : | Mr. Kapil Gupta |
| For Respondent(s) | : | Mr. B.L. Nasuna, Dy.GA |

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**HON'BLE MR. JUSTICE ASHOK KUMAR JAIN**

**Order**

**20/12/2024**

1. Instant revision petition is preferred by petitioner accused aggrieved from order dated 01.10.2021 in Criminal Case No.10/2021 passed by learned Special Judge (P.C. Act Cases) Alwar wherein charge under Section 7 of Prevention of Corruption (Amended) Act and 120 B IPC was framed.

2. Learned counsel for petitioner has submitted that it is duty of the trial court to see whether the essential elements to constitute alleged offence are present or not in the charge-sheet filed by the prosecution. He also referred to the facts of the case and submitted that there was no work pending with present petitioner at the time of filing of complaint before the ACB. He also referred to the ingredients under Section 7 of PC (Amended) Act and submitted that unless there is a demand or pendency of work offence under Section 7 of PC (Amended) Act is not made out. He also referred the prosecution sanction and submitted that only on

draft prosecution sanction the competent authority has placed his signature which clearly shows that authority concerned has not applied his mind as per the material on record. He also referred the material on record and submitted that a previous animosity is already an admitted fact and same is not considered by the trial court. He also referred the voice sample and submitted that there is no positive report of matching with the voice sample. Learned counsel has further referred the record and submitted that the entire case was prepared only to frame present petitioner. At last, he submitted that there is neither matching of voice sample, nor demand or verification therefore charge under Section 7 of PC Act cannot be framed against the petitioner. He also submitted that last few days before the 04.05.2020 when report was registered there were holidays and it is not possible to execute any work. He also relied upon judgment in case of **Jitendra Singh Vs. State of Rajasthan (S.B. Criminal Revision Petition No.265/2023 order dated 16.05.2023)**.

3. Learned Public Prosecutor has opposed the contentions of learned counsel for petitioner and submitted that after framing of charge two witnesses were already examined by the trial court.

4. Heard learned counsel for petitioner and learned Public Prosecutor. Perused the record including referred documents received under the RTI Act 2005 by the petitioner and submitted same in support of his case for discharge.

5. The facts giving rise to instant petition are that on 04.05.2020 complainant Puneet Gaur filed a complaint at ACB Outpost, Alwar stating that his firm M/s Sai Electrical Contractor is working in Jaipur Discom at Alwar Circle and pursuant to work

order issued to him, the complainant has submitted his bill for payment but Executive Engineer K.L. Saini, (present petitioner) has demanded bribe in form of commission. The complainant has submitted that out of a Bill of ₹35 lacs he has received ₹25 lacs and he paid ₹ 1 lac as bribe to K.L. Saini and Bunty Saini. Now for remaining payment of ₹10 lacs again K.L. Saini is demanding bribe. After verification of complaint a trap proceeding was planned and on basis of plan, Bunty Saini was trapped who took bribe on behalf of present petitioner K.L. Saini. As a result of proceeding, K.L. Saini and Bunty Saini were arrested. After registration of FIR No.66/2020 on 06.05.2020 under Sections 7 of PC (Amended) Act and 120B IPC investigation was carried out. After investigation, charge-sheet was file against K.L. Saini after procuring prosecution sanction.

6. A specific claim is made that no bill was pending in the office of present petitioner and there was no payment at all. A specific contention was also submitted that no work was pending with present petitioner.

7. A Constitution Bench of Hon'ble Supreme Court in case of **Neeraj Dutta vs State 2022 SCC Online SC 1724** while considering evidence to establish charge under Sections 7 and 13 of P.C. Act has observed that the issue of demand or bribery can be established from direct or circumstantial evidence. Considering the guidelines as laid down in case of **Neeraj Dutta vs State (Govt.Of N.C.T.Of Delhi) (supra)** this contention cannot be accepted particularly looking to the fact that the complainant was working as a contractor who made a complaint before the ACB and after verification the complaint was found to be true. The ACB has no-

ticed the conversation between petitioner and Bunty Saini (a employee). A trap proceeding was also planned and led by ACB. The turthfullness and sufficiency of these evidence can be decided during evidence of prosecution but not prior to that. Herein, one of the charges accused Bunty was arrested red handed by the ACB while accepting bribe on behalf of petitioner. A connect between present petitioner and Bunty Saini is subject matter of trial. At the stage of framing of charge, when we consider the complaint, statement of complainant and verification then there is sufficient material to proceed against present petitioner.

8. Similarly an objection was raised that a voice sample is not matching and FSL report has supported the petitioner. Considering the judgment in case of **Neeraj Dutta vs State (Govt.Of N.C.T.Of Delhi) (supra)** we are of the view that issue of demand of bribe can be established by directly or indirectly therefore if there is no substance in allegation against petitioner then he may get benefit at the end of the trial but not at the stage of charge, wherein more than sufficient material is available on to frame charge.

9. The counsel has also referred that there was no application of mind while granting prosecution sanction. We have considered in light of order referred by the counsel. The prosecution sanction is part of record and same was signed by competent authority. Whether it was an application of mind or not, same can be considered at the time of final adjudication but not otherwise.

10. During course of trial, PW-2 Naveen Arora was examined by the prosecution but his evidence can not be read in support of contention of petitioner while considering revision against charge.

11. Section 227 of Cr.P.C. deals with the discharge of accused in Sessions Case and in case, he is not discharged then the Session Court is obliged to consider framing of charge against the accused under Section 228 of Cr.P.C. While considering the material forwarded by investigating agency/prosecution for facing trial, the accused has a right to ask for discharge, under Sections 227 and 239 of Cr.P.C. If there is no sufficient ground on basis of material forwarded by prosecution then the accused is entitled for discharge but when there is sufficient material then the Court is duty bound to frame a charge. Needless to say that before forming any opinion it is duty of the Court to assign a reason either for discharge or for framing of charge. A detailed reasoning is not required for framing of charge against anyone but it is expected from the trial court to give at least brief reasons to frame charge.

12. In case of **Vishnu Kumar Shukla & Anr. Vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1026**, Hon'ble Supreme Court after considering several judgments has referred the analysis and reasoning about approach of the court in light of language used under Sections 227 and 239 of Cr.P.C. and we reproduced the same as under:-

> "20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Section 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Section 227 and 228, CrPC are well settled, courtesy, inter alia, **State of Bihar v Ramesh Singh, (1977) 4**

**SCC 39; Union of India v Prafulla K Samal, (1979) 3 SCC 4; Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715; Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76; Dilawar B Kurane v State of Maharashtra, (2002) 2 SCC 135; Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605; Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137; Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290**. We need only refer to some, starting with Prafulla K Samal **(supra)**, where, after considering Ramesh Singh **(supra), K P Raghavan v M H Abbas, AIR 1967 SC 740** and **Almohan Das v State of West Bengal, (1969) 2 SCR 520**, it was laid down as under:

> ‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evi-

> dence as if he was conducting a trial.' (emphasis supplied)

13. In case of **State of Gujarat Vs. Dilipsingh Kishorsinh Rao, 2023 INSC 894**, Hon'ble Supreme Court after considering the settled position of law for framing of charge under Sections 227 and 228 Cr.P.C. held as under:-

> "7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed

the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge- sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must pro-

ceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in **State of Tamil Nadu Vs. N. Suresh Rajan and Ors. (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

> "29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the

> court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on

record need not be gone into. Hon'ble Supreme Court by referring to its earlier decisions in case of **State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659** and the **State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

14. In case of **Captain Manjit Singh Virdi (Retd.) vs Hussain Mohammed Shattaf, AIR 2023 SC 2480** while relying upon judgment in case of **State By Karnataka Lokayukta Police Station, Bengaluru Vs. M.R. Hiremath reported in (2019) 7 SCC 515** and **State of Rajasthan Vs. Ashok Kumar Kashyap reported in (2021) 11 SCC 191,** Hon'ble Supreme Court has held that at the stage of framing of charge entire evidence produced by prosecution is to be believed. In case, no offence is made out then only accused can be discharged but truthfulness, sufficiency and acceptability of material by investigating agency can be done only at the stage of trial. At the stage of charge, court has to satisfy that a prima facie case is made out against

accused persons or not, but interference at the stage of charge requires strong reasons.

15. Considering the abovementioned legal point on charge, I am of the considered view that herein the main allegation is upon present petitioner and on the basis of allegation the investigation was launched and ultimately chargsheet was filed. Whether charge-sheet was filed with animosity or otherwise, again this is an issue to be considered at the time of final adjudication after recording of evidence but not before. The judgment in case of **Jitendra Singh Vs. State of Rajasthan (supra)** is not applicable to the facts and circumstance of the case, therefore the revision petition sans merit and liable to be dismissed.

16. Accordingly, revision petition along with pending application, if any, stands dismissed.

(ASHOK KUMAR JAIN),J

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