

(2018) 07 CHH CK 0351

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 1133 Of 2017

Jaspal Bagh Yadav
And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: July 30, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 120B, 420
- Code Of Criminal Procedure, 1973 - Section 239, 240, 397
- Essential Commodities Act, 1955 - Section 3, 7

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Rajesh Jain, Ashish Shukla

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 13.07.2017 passed in CRR No.84/17 by the Sessions Judge, Bilaspur. By such order, the revisional

Court has affirmed the framing of charge by the JMFC which was passed on 19.05.2017 in criminal appeal No.273/17 under Sections 420/34 and 120

(B) IPC.

3. As per the prosecution case, on 06.03.2017 on a report made by one Ajay Dubey, the police has raided the premises owned by Jaspal Bagh

petitioner No.1, wherein it was found that Jaspal Bagh in connivance with the other co-accused i.e. the petitioners herein, used to mix up chemical in

the diesel with the Kerosene and also the kerosene oil was made as blue and the raid having been made at about 1 am in the night on 07.03.2017 at

that time all the persons were found present and the diesel mixed with the kerosene oil was recovered. Thereby the offence under Sections 420/34

and 120 B IPC read with Section 3 & 7 of the Essential Commodities Act, were framed.

4. Learned counsel for the petitioners submits that there is no offence committed by the petitioners as the said diesel was neither sold nor it was an

adulteration of chemical mixed with the kerosene. He further submits that all the oil which was seized was battery oil and the FSL report is also not

been filed by the prosecution. It is stated that at least there should have been an evidence for the fact that the petitioners were selling the articles

which has caused damage to the vehicle of general people. Therefore, in the absence of the same nothing can be transpired against the petitioners.

5. Per contra, learned State counsel opposes the same and submits that when the raid having been conducted diesel, kerosene, chemical etc. were

seized and the statement of Ajay Dubey would show that for a quite long period the vehicles were being damaged when they enquired the reasons

thereof and thereafter when the raid was committed, such goods were seized, therefore, the framing of charge cannot be faulted.

6. Perused the record and also the statement of Sunil Yadav, Ajay Dubey & Gendram. Ajay Dubey has stated that during the raid since it was found

that the present petitioners in connivance with each other were mixing up the diesel making it adulterated and it was found that the tankers bearing

registration numbers CG10-A-3554, CG07/BB 8947 and CG10/A-5877 were mixed with contaminated diesel and kerosene oil.

7. The Supreme Court in a case law reported in AIR 2013 SC 52 - Shoraj Singh Ahlawat Vs. State of U.P has observed that the Court trying the case

can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section

240 of Cr.P.C. provides for framing of a charge which reads as under:

240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for

presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

8. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if

any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has

committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit

of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for

consideration of this Court in *Onkar Nath Mishra Vs. state (NCT of Delhi)* (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96).

9. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be

put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the

stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the

above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court

has to only see whether there is ground to presume that the accused had committed the offence or not ?

10. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of *State of*

Rajasthan Vs. Fatehkaran Mehdu, reported in AIR 2017 SC 796. It is stated that at the stage of framing of charge, the Court is concerned not with

the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed

an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

11. Applying the aforesaid principles in this case and also considering the documents, statement of the witnesses, at this stage it cannot be stated that

the evidence led by the prosecution is devoid of merits, it will be tested during the course of trial.

12. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage. Accordingly, the petition is dismissed.