

Brijlal Chhiroliya Vs State of Madhya Pradesh**3088 of 2015**

Court: MADHYA PRADESH HIGH COURT**Date of Decision:** March 5, 2018**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 227](#) - Calling for records to exercise powers of revision - High Courts powers of revision - Discharge

Hon'ble Judges: S.K. Seth, H.P. Singh**Bench:** Division Bench**Advocate:** Rohan Harne, Prakash Gupta**Final Decision:** Dismissed

Judgement

1. This order shall also govern the disposal of Criminal Revision No.3116/2015 (Mustaq Mohd. Khan Vs. State of M.P.) and Criminal Revision

No.146/2016 (Damodar Prasad Vs. State of M.P.) as all the revisions raise identical legal controversy. For the sake of convenience and disposal

of the present controversy, we have noticed the facts from Criminal Revision No.3088/2015.

2. This Criminal Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 is directed against the order dated

16.10.2015 passed by the Special Judge (Prevention of Corruption Act), Raisen (M.P.) in Special Case No.04/2010 whereby application under

Section 227 of the Cr.P.C. for discharge of the applicant has been rejected and charges under Sections 409, 420, 467, 468, 471, 120-B of the

Indian Penal Code and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 have been framed against the applicant.

3. Co-accused have also challenged the impugned order in Criminal Revision No.205/2016, Criminal Revision No.3389/2015 and Criminal

Revision No.141/2016. The above revisions have been dismissed on 03.10.2017 and the case of the present applicant who is coaccused stands

on the same footing.

4. Respondent filed charge-sheet under Sections 409, 420, 467, 468, 471, 120-B of the Indian Penal Code and Section 13(1)(d) r/w Section

13(2) of the Prevention of Corruption Act, 1988 against the applicant.

5. The learned Trial Court on 16.10.2015 framed charges against the applicant under Sections 409, 420, 467, 468, 471, 120-B of the Indian

Penal Code and Section 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. The applicant prays to set aside the impugned

order dated 16.10.2015 and to discharge him from the charges.

6. The applicant was working in the capacity of Ex-Manager in the Prathmik Sahkari Shaakh Committees at Marukheda Tappa, Basiya and

Bheraru, all of which are allied to Jila Sahkari Kendriya Bank, Begumganj Branch, Raisen. It was held that the Chairman and Executive Officer of

the Co-operative Bank also comes under the definition of public servant under Section 2(c)(ix) of the Prevention of Corruption Act, 1988.

7. As per the principles laid down in the case of State of Maharashtra & Others Vs. Brijlal Sadasukh Modani reported in [(2016) 4 SCC 417]

and State of MP Vs. Rameshwar & Others reported in [(2009) 11 SCC 424] , the applicant can be charged for offence under Sections 13(2),

13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120-B of Indian Penal Code.

8. The applicant is charged for the criminal conspiracy of wrongful loss of Rs. 7,23,65,059/- of the public money. Prima facie, there is sufficient

material on record to frame aforesaid charges against the applicant. Further, the trial is in progress and more than 20 prosecution witnesses have

been examined.

9. It is settled law that the Court is not expected to marshal the record with a view to decide the admissibility and reliability of document on record.

The involvement of the applicant in the alleged conspiracy to commit the acts which are offence he is charged with, cannot be ruled out. The trial

Court is justified in framing charges against the accused. The defence of the applicant would not be considered at the time of framing of charges. It

can be considered at an appropriate stage of defence evidence.

10. In the case of Rajiv Kumar Vs. State of Uttar Pradesh and another reported in [(2017) 8 SCC 791] , Hon"ble Supreme Court has held as

under:

10. Section 13 of the PC Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public

servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of ""criminal misconduct"". Sub-

section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13 (2) of the PC Act lays down the

essentials and punishment respectively for the offence of ""criminal misconduct"" by a public servant.

..... provision makes it clear that if the elements of any of the three subclauses are met, the same would be sufficient to constitute an offence of

criminal misconduct"" under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13 (1) are independent, alternative and

disjunctive. Thus, under Section 13 (1)(d)(i) of the PC Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a

public servant in itself would amount to criminal misconduct. On the same reasoning under Section 13(1)(d)(ii) of the PC Act ""obtaining a valuable

thing or pecuniary advantage"" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal

misconduct.

11. In the case of State of Rajasthan Vs. Fatehkaran Mehdu reported in [(2017) 3 SCC 198] , Hon"ble Supreme Court has held as under:

The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court

should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in

consonance with scheme of Code of Criminal Procedure.

The Supreme court has further held that-

The object of Section 397 of Cr.P.C. is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the

proceeding.

12. In view of the law laid down by the Supreme Court, we do not find force in the contention of the applicant.

13. Thus, after considering all the contentions raised by the counsel for the applicant, we find no error or illegality with the order impugned.

14. In view of the aforesaid discussions and the statement of law, we do not find any merit and substance in the present Criminal Revision,

therefore, the same being devoid of any substance is hereby dismissed.

15. Let a copy of this order be retained in the record of Criminal Revision No.3116/2015 and Criminal Revision No.146/2016.

16. Ordered accordingly.