

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Cr.M.P. No. 2632 of 2021**

Pushpendra Kumar Sinha, aged about 70 years, son of Late Mithilesh Kumar Sinha, resident of Flat No.2C, Landmark Apartment, Hawaii Nagar, Khunti Road, P.O. -Hatia, P.S. -Jagarnathpur, District -Ranchi.

... Petitioner

Versus

The State of Jharkhand through Superintendent of Police, Anti-Corruption Bureau, Ranchi, having address as Audrey House, P.O - G.P.O, P.S. -Gonda, District -Ranchi

... Opposite Party

For the Petitioner : Mr. Prashant Bhushan, Advocate
: Mr. Pandey Neeraj Rai, Advocate
For the A.C.B. : Mrs. Priya Shrestha, Spl. P.P.

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**C.A.V. ON 03.01.2022****PRONOUNCED ON 24/01/2022**

Anil Kumar Choudhary, J. Heard the parties through video conferencing.

2. This criminal miscellaneous petition has been filed with a prayer to quash the entire criminal proceedings initiated against the petitioner vide Vigilance (Special) Case No. 20 of 2013 (corresponding to Vigilance P.S. Case No. 19 of 2013) registered under Sections 409, 420, 467, 468, 471, 477A with Section 120B of the Indian Penal Code read with Sections 13(1) (c) (d) and under Section 13(2) of the Prevention of Corruption Act, 1988 and also to quash the order dated 06.08.2021, passed by the learned Special Judge, Anti-Corruption Bureau, Ranchi in Misc. Cr. Application No. 1171 of 2019 and to quash/set aside, with all consequences, the order framing charge dated 18.11.2021 as well as the charges framed on 18.11.2021.

3. The brief facts of the case is that The First Information Report in this case was registered with the allegation that under APDRP scheme related to

the towns of Ranchi, Khunti, Ramgarh, Jamtara and Pakur, it was detected that illegal allotment of tender was given to the contractor under criminal conspiracy by the petitioner along with the co-accused persons by misusing their power and post as Public Servants. It is further alleged that the members of the Tender Evaluation Committee were changed many times to finalize the tender and the approval of the competent authority in submitting the revised price was not found in the file. It is also alleged that the cost of that was not approved by the Board and that under criminal conspiracy of the petitioner along with the co-accused persons, the approval of the tender was made ignoring the advice of accounts department to the contrary. It is also alleged that projects of Ranchi town as well as the other towns of the year 2004 was decided in the year 2008 and the work order was placed by escalating the estimate. It is further alleged that the complicity of the petitioner is evident from the fact that on account of intentional delay in allotment of the work, the amount had to be raised substantially and the petitioner is responsible for huge amount of wrongful loss caused to the Board. The further specific allegation against the petitioner is that although the Accounts Section of Jharkhand State Electricity Board made an objection regarding the procedure of tender but the petitioner overruled the objection and made favourable noting in favour of the contractor which was approved by the Chairman and in the process the evaluation report submitted by MECON was totally ignored in order to provide benefit to the party concerned. It is also alleged that Ranchi district was allotted ₹ 18.81 crore approximately in the year 2004 for this program but tender was finalized in the year 2008 at a cost of ₹ 34.25 crores approximately causing huge wrongful loss to the state.

4. After submission of charge sheet the petitioner filed a petition for discharge. The same was rejected by the learned trial court. The petitioner earlier filed Criminal Revision No. 578 of 2018 before this court challenging the said rejection of the prayer of the petitioner for discharge in the case and a coordinate bench by the order dated 07.05.2019 dismissed the said revision application. Though the petitioner moved the Hon'ble Supreme Court of India against the said order passed by the coordinate bench of this court vide SLP (Crl.) no. 7338 of 2019, but the said special leave petition stood dismissed

as withdrawn vide the order dated 23.08.2019 of the Hon'ble Supreme Court of India.

5. It is submitted by Mr Prashant Bhushan the learned counsel for the petitioner that during the earlier journey of the petitioner before this court as well as the Hon'ble Supreme Court of India the petitioner could not place the report of the Public Accounts Committee dated 23.10.2008 wherein it has been observed that the delay was caused everywhere in the country and the same could not be attributed to any officer of the Jharkhand State Electricity Board. It is next submitted that despite such report of the Public Accounts Committee, the investigating agency relied upon the report of the auditor to the contrary effect. Relying upon the Judgment of Hon'ble Supreme Court of India in the case of **State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568]** wherein it was observed in paragraph 29 as under:

"29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]."

it is submitted by Mr Prashant Bhushan that even though the order rejecting the petition of the petitioner to be discharged in the trial has been rejected and the prayer of the petitioner to be discharged in the case has reached the finality, still by exercising the powers vested under section 482 of the Code of Criminal Procedure, 1973 this court can quash the entire criminal proceeding. Mr Bhushan next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Rajiv Thapar & Ors. v. Madan Lal Kapoor, (2013) 3 SCC 330** paragraphs 29 and 30 of which reads as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 Cr.P.C, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the

prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.

And submits that powers under section 482 of the Code of Criminal Procedure can be exercised by this court to consider indubitable, unimpeachable defence documents at this stage, even after the dismissal of

the revision petition of the petitioner, by the coordinate bench of this court, challenging the order rejecting the prayer for discharge of the petitioner, in this case. Mr Bhushan in respect of these settled principles of law also relied upon the judgment of **Harshendra Kumar D. Versus Rebatilata Koley and others (2011) 3 SCC 351** paragraph 25 of which reads as under

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

It is next submitted by Mr Bhushan that though the said Public Accounts Committee report was enclosed with the said SLP before the Hon'ble Supreme Court of India but since there has not been any consideration on merit of the SLP hence this court can consider the same. Mr Bhushan next submits that the other documents which could not be produced by the petitioner earlier being the Report of the Ministry of Power, Government of India on restructuring of APDRP in October, 2008 regarding actual achievement of APDRP under 10th plan schemes under all the state utilities and another PAC report of 2009-10 presented in the Lok Sabha and Rajya Sabha on 26.11.2009 which also depicted the deficiencies in APDRP which led to the delay in implementation across India and which goes to show that there is no irregularity or illegality in the payments to the contractors, and it is a fit case where charges should not be framed against the petitioner. It is next submitted that the allegations against the petitioner are civil in nature and the Anticorruption Bureau has deliberately concealed the crucial facts in

order to make out a case against the petitioner. It is lastly submitted by Mr Bhushan that since no case is made out against the petitioner hence the entire criminal proceeding initiated against the petitioners vide Vigilance (Special) case number 20/2013 (corresponding to vigilance PS case number 19/2013) registered under sections 409, 420, 467, 468, 471, 477A with section 120 B of the Indian Penal Code and under section 13(1) (c)(d) read with section 13 (2) of the Prevention of Corruption Act 1988 including the order dated 06.08.2021 passed by the learned Special Judge, ACB, Ranchi in Miscellaneous Criminal Application Number 1171 of 2019 arising out of the said PS case be quashed and set aside with all consequences and the order framing charges dated 18.11.2021 as well as the charges framed on 18.11.2021 by the said learned Special Judge, be also quashed.

6. Mrs Priya Shrestha the learned special public prosecutor on the other hand vehemently opposes the prayer for quashing of the entire criminal proceeding and all consequential orders as prayed for by the petitioner and submits that since charge has already been framed and the trial of the case has begun hence the petitioner is at liberty to file any or all the documents in his defence and also to take all his defence at the appropriate stage during the trial. It is next submitted that as has been mentioned in detail in the order dated 07.05.2019 passed by the coordinate bench of this court in Criminal Revision Number 578 of 2018 and which order has already reached the finality as the Special Leave Petition has been dismissed by the Hon'ble Supreme Court of India as withdrawn; there is ample evidence in the record to frame charges against the petitioner hence this is not a fit case where the entire criminal proceeding is to be quashed. It is further submitted by Mrs Shrestha that the import and purport of the portion of the report of the Public Accounts Committee can be better appreciated in a full dress trial which has already begun and it will not be proper at this stage for this court to appreciate one of the defence of the petitioner in a piecemeal manner. Mrs Shrestha then submits that even assuming for the sake of argument though not admitting, that the documents produced by the petitioner being the reports of the Public Accounts Committee as also the report of the Ministry of Power, Government of India on restructuring of APDRP in October, 2008 regarding actual achievement of APDRP under 10th plan schemes under all

the state utilities are true, still they at best only explain the delay part of the allegation against the petitioner but that is not the only allegation for which the petitioner is facing the trial rather there is specific allegation against the petitioner of being in criminal conspiracy with the co-accused persons has indulged in cheating and forgery, deliberately ignoring the objections raised by the accounts department, to cause wrongful loss to the government exchequer and corresponding wrongful gain to himself and the co-accused persons and the documents themselves are not sufficient to absolve the petitioner of all the charges he is facing in the trial. Mrs Shrestha relied upon the judgment of Hon'ble Supreme Court of India in the case of **Soma Chakravarty v. State through C.B.I.** reported in (2007) 5 SCC 403 paragraph 10 of which reads as under:

10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

And submits that at the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. In this respect Mrs Shrestha also relied upon the judgment of Hon'ble Supreme Court of India in the case of **State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711** paragraph 7 of which reads as under:

7. We have considered the arguments addressed on behalf of the parties as also the decisions relied upon by them. The question for our consideration in this appeal is whether there is any statutory requirement compelling or permitting the trial court to take into consideration the material produced by the defence at the stage of taking cognizance or framing of charges. It is seen from Section 227 of the Code that in a case triable before the Court of Session, if the court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so. This section

nowhere contemplates an opportunity being given to the accused person to produce evidence in defence at that stage. The section is quite clear that whatever consideration that has to be made by the court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the court comes to the conclusion that there is ground for presuming that the accused has committed an offence then the court shall frame charge under Section 228 of the Code, otherwise it shall discharge the accused under Section 227 of the Code. Almost similar is the requirement of law when a warrant case is being considered for framing a charge under Section 240 of the Code. This Court in the case of Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038] following the judgment of this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] has held: (SCC p. 279, para 18)

and submits that section 227 of the Code of Criminal Procedure, 1973 nowhere contemplates an opportunity be given to the accused person to produce evidence in defence at that stage and as the petitioner has not produced the document before the trial court, the same certainly cannot be used by this court to set aside the charge which has already been framed in the case more so because the prayer for setting aside the said order of the trial court rejecting the prayer of the petitioner for discharge in the case has not been interfered with even by the Hon'ble Supreme Court of India and the said order has thus reached finality.

It is lastly submitted by Mrs Shrestha that the observations made in the reports relied upon by the petitioner are out of context and has no bearing so far as the allegations against the petitioner made in this case is concerned and they have no bearing so far as this case is concerned hence it is submitted that this petition being without any merit be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials in the record it is pertinent to mention here that it is a settled principle of law as has been observed by the Hon'ble Supreme Court of India in paragraphs 17 and 18 in the case of **State of Orissa v. Debendra Nath Padhi**, (supra)

17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The

contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot 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. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

That at the stage of framing of charge the defence of the accused cannot be put forth. The charge has already been framed in this case and the trial has begun. Perusal of the record reveals that there is no material in the record to suggest that the said copy of the reports of the Public Accounts Committee as also the report of the Ministry of Power, Government of India on restructuring of APDRP in October, 2008 regarding actual achievement of APDRP under 10th plan schemes under all the state utilities was ever placed before the trial court even at the time of 2nd approach for discharge after the said Special Leave Petition was dismissed by the Hon'ble Supreme Court of India as withdrawn.

As has been held by the Hon'ble Supreme Court of India in the case of **Supdt. and Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja**, reported in (1979) 4 SCC 274, para-18 of which reads as under:

"18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] , the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

At the stage of framing the charge the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. At this stage, even a very strong suspicion founded upon materials before the Special Judge, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

8. Now coming to the facts of the case the allegation inter alia against the petitioner is that he in criminal conspiracy with the co-accused persons was instrumental in illegal allotment of tender to the contractor by misusing their power and post as Public Servants. There is further allegation that the members of the Tender Evaluation Committee were changed many times to finalize the tender and the approval of the competent authority in submitting the revised price was not found in the file. It is also alleged that the cost of that was not approved by the Board and that under criminal conspiracy of the petitioner along with the co-accused persons, the approval of the tender was made ignoring the advice of accounts department to the contrary. These allegations has got nothing to do with the delay that occurred in allotment and the consequential escalation in price of the tender which at the most is claimed to be explained by the said documents produced before this court

and basing upon which it was urged upon this court to quash the entire criminal proceeding and to set aside the order framing the charge and the charges that have been framed. Hence this court is of the considered view that even assuming for the sake of argument that the documents filed by the petitioner are true and genuine still they not sufficient enough in themselves to absolve the petitioner from all the charges framed against him in this case.

9. In view of the discussions made above this court do not find any merit to accede to the prayer of the petitioner to quash the entire criminal proceeding as well as the order framing charge and the charges already framed in the case more so at this belated stage when the trial of the case has already begun. Accordingly this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 24th day of January, 2022
AFR/ Sonu-Gunjan/-