HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
JUSTICE SUJOY PAUL.

Criminal Revision No. 265/2010

Savita Devi
Vs.
State of MP

Shri Sanjay Bahirani, Advocate for the petitioner.
Shri A.S.Rathor, Panel Lawyer, for the respondent/ State.

O R D E R
(02/09/2015)

This revision filed under section 397/401 of the Code of Criminal Procedure (CrPC) assails the order dated 19.2.2010, whereby the court below has framed charges against the petitioner.

2. It is stated by the petitioner that She is President of Ambika Gramin Mahila Bahuddesiya Sanstha Maryadit, Asnet, District Bhind. The said society is running fair price shop and is governed by the provisions of Essential Commodities Act, 1955 (EC Act). It is stated that one Arjun Singh R/o Kunwarpura preferred a complaint to the Government that kerosene, food stuff etc. are not being distributed properly by the fair price shop. Inspection was carried out on 7.5.2008 by Assistant Supply Officer. After the inspection, FIR was registered pursuant to written report dated 7.5.2008 by Assistant Supply Officer. The offence under Section 317 of EC Act as well as under Sections 409 and 420 IPC was registered against the petitioner.

3. In due course, challan was filed before Sessions Judge, Bhind, from where it was transferred to First Additional Sessions Judge, Bhind. The said Court by impugned order framed the charge against the petitioner.

4. Shri Sanjay Bahirani, learned counsel for the petitioner, submits that the FIR and charge framed by the trial court is silent about violation of any particular Control Order. Hence, no charge can be framed by trial court under Section 3/7 of EC Act. The said Section can be invoked when it is found that the person contravened any Order made under section 3 of EC Act. In support of this contention, he relied on *2008 (1) EFR 198 (Hema Bhadoriya vs. State of MP); 2009 (1) EFR 357 (Kunwar Singh Bhadoriya vs. State); MCRC No. 8836/2013 (Jodh Singh and others vs. State of MP); MCRC No. 2967/2008 (Mahesh Chourasiya vs. State of MP).* Learned counsel for the petitioner further contends that the petitioner could not have been arrayed as an accused in the FIR merely because she is the President of the society. The prosecution has no evidence to implead the petitioner as an accused in the FIR. The action of respondent is contrary to Section 10(1) and 10(2) of EC Act. To elaborate, Shri Bahirani contends that in absence of specific pleading in the FIR regarding the role of the petitioner being President of Society, no FIR can be permitted to stand. In other words, it is urged that there is no pleading in the FIR that petitioner being a President was responsible to look after the affairs of day to day business of fair price shop and, therefore, it cannot be assumed that the petitioner was responsible person for committing the offence. It is argued that similar Sections, like Section 10 of EC Act, are there in various Statutes like Negotiable Instruments Act, Prevention of Food Adulteration Act etc. After considering the said enactments, the Apex Court quashed similar proceedings. Reliance is placed on *1990 (1) EFR 1 (Sham Sunder vs. State of Haryana); 2008 (1) EFR 198 (Hema Bhadoriya vs. State); 2009 (1) EFR 603 (Vimla Devi vs. State of MP); MCRC No. 7283/2011 (Piyush Gupta vs. State of MP).*

5. The next submission of Shri Bahirani is that once

FIR is registered under a special statute, i.e., EC Act, the provision of Indian Penal Code would not be attracted. Reliance is placed on *2010 (2) EFR 500 (Pepsico Indian Holding Pvt. Ltd. vs. State of MP).* Lastly, it is urged that even otherwise necessary ingredients for invoking Sections 409 and 420 IPC are not available in the FIR/Charge. To bolster this, it is submitted that in the FIR, it is not mentioned that any property was entrusted to the petitioner or she was holding the property in her capacity as public servant or doing her business as banker, merchant, broker, attorney or agent etc. Hence, no case is made out by the prosecution regarding criminal breach of trust in respect of property. He contends that in the FIR, it is not mentioned that the petitioner cheated any one and, therefore, no case under section 420 IPC is made out. Section 415 specifically provides that the prosecution would be required to show that accused practised deception. In other words, accused must have been found in making a representation in respect of certain fact which is found to be false or accused has fraudulently or dishonestly delivered any property to any person etc. In nutshell, it is submitted that necessary ingredients for attracting Sections 409 and 420 IPC are not available in FIR/Charge. Reliance is placed on the judgment, passed in *MCRC No. 2967/2008 (Mahesh Chourasiya vs. State*).

Shri Bahirani, in support of aforesaid contentions, filed dates and events and legal synopsis.

6. *Per Contra,* Shri Rathore, learned Panel Lawyer, supported the charge. He submits that at this stage, no interference is warranted. He submits that necessary ingredients for invoking penal provisions are available in the FIR/Charge. The other aspects are matter of evidence. These aspects cannot be gone into at this stage. The trial court in appropriate stage will deal with

the factual matrix of the matter.

7. No other point is pressed by learned counsel for the parties.

8. I have heard the parties at length and perused the record.

9. The petitioner has challenged the validity of the charge sheet. It is apt to quote the relevant portion of it, which reads as under:-

"// आरोप–पत्र //

मै, संजीव कुमार सरैया , प्रथम अपर सत्र न्यायाधीश, भिण्ड (म.प्र.) तुम सविता देवी पति हरीराम पर निम्नलिखित आरोप अधिरोपित करता हूँ :–

1. *यह कि, तुमने दिनांक 17.10.2007 से दिनांक 07.05.2008 तक शासकीय उचित मूल्य की दुकान चांदोख, जिसे अंबिका ग्रामीण महिला बहुउद्देशीय सहकारी संस्था के द्वारा संचालित किया जाता है, के अध्यक्ष होते हुए तुमने शासकीय निर्धारित मूल्य पर वितरण हेतु प्राप्त गेहूं और कैरोसिन को निर्धारति मूल्य पर विक्रय नहीं करके उसे बेईमानीपूर्वक स्वयं के उपयोग में व्यनन करके आपराधिक न्यास भंग किया और ऐसा करके तुमने धारा 409 भा.द.वि. के अधीन दण्डनीय अपराध किया, जो इस न्यायालय के विचारण योग्य है।*
2. *इसी दिनांक, समय व स्थान पर तुमने शासकीय निर्धारित मूल्य पद वितरण हेतु प्राप्त गेहूं एवं कैरोसिन की उसके पात्र राशनकार्डधारियों को विक्रय नहीं करके उनके राशनकार्ड में फर्जी रूप से इंद्राज करके गेहूं एवं कैरोसिन को अन्य व्यक्तियों को बेईमानीपूर्वक विक्रय करके अभिलाख प्राप्त कर कारित किया और ऐसा करके तुमने धारा 420 भा.दं.वि. के अधीन दण्डनीय अपराध किया, जो इस न्यायालय द्वारा विचारणीय है।*
3. *इसी दिनांक, समय व स्थान पर शासन द्वारा निर्धारत मूल्य पर विक्रय हेतु प्रदाय किए गेहूं और कैरोसिन को निर्धारित मूल्य पर वितरित नहीं करके धारा 3 आवश्यक वस्तु अधिनियम का उल्लंघन किया और ऐसा करके तुमने धारा 7 आवश्यक वस्तु अधिनियम के अधीन दण्डनीय अपराध किया, जो इस न्यायालय द्वारा विचारण योग्य है।*

और एतद् द्वारा मै तुम्हे निर्देशित करता हूँ कि तुम्हारे उक्त आरोपों का विचारण इस न्यायालय द्वारा किया जावे।"

10. The first contention of learned counsel for the petitioner is that FIR does not contain specific pleading about violation of a particular control order. I do not find much merit in the said contention. In *(2003) 6 SCC 175*

(Superintendent of Police, CBI and others vs. Tapan Kumar Singh). The Apex Court opined that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. In the same judgment, the Apex Court further held that "the mentioning of a particular section in the FIR is not by itself conclusive, as it is for the court to frame charges having regard to the material on record." Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charge. Same view is taken in *(2009) 9 SCC 719 (Jarnail Singh and others vs. State of Punjab).* In the said case, the names of appellants were not mentioned in the FIR. The Apex Court opined that FIR is not the encyclopedia of all the facts relating to crime. The only requirement is that at the time of lodging FIR, the informant should state all those facts which normally strike to mind and help in assessing the gravity of the crime or identity of the culprit, briefly. As per the said legal position, I find no substance in the contention of the petitioner that FIR is bad in law because violation of particular control order is not mentioned therein.

11. Ancillary question raised by Shri Bahirani is that as per charge No.3 of impugned charge sheet, no offence is made out because the relevant control order has not

been mentioned. Hence, necessary ingredients for attracting sections 3 and 7 of EC Act are not satisfied. This point requires serious consideration. In support of this contention, reliance is placed on the judgment of this Court in *Hema Bhadoriya, Kunwar Singh Bhadoriya, Jodh Singh and Mahesh Chourasiya (supra).*

12. It is seen that the judgment of *Hema Bhadoriya (supra)* is followed in aforesaid other orders. A careful reading of judgment of *Hema Bhadoriya (supra)* shows that the court specifically directed the State to inform as to which Order has been violated. It was not informed and, therefore, criminal proceedings were quashed. Before dealing with this aspect, I deem it apposite to quote certain definitions from EC Act:-

> *"2(c) "notified order" means and order notified in the Official Gazette;*
>
> *(cc) "Order" includes a direction issued there under".*

13. The heading of section 7 of the EC Act is that *"any person contravenes <u>any order made under section 3</u> ..... he shall be punishable." (emphasis supplied).* Plain reading of Sec. 7 shows that for attracting this Section of the EC Act, the primary requirement is that there must be violation of an "Order". In other words, for attracting section 7 of the EC Act, the essential requirement is an "Order", the violation of which is alleged. Precisely for this reason, in *Hema Bhadoriya (supra)* and aforesaid other judgments of this Court, the FIR/charge has been set aside because it did not disclose about the "Order". Thus, mentioning and establishing violation of an Order is *sine qua non* for attracting penal clause under section 7 of the EC Act. To this extent, I respectfully agree with the view taken by this Court in *Hema Bhadoriya (supra)* and other cases referred above.

14. The conundrum is, whether a charge sheet should be set aside at this stage because it does not mention

about the “Order”. The Apex Court in *Prakash Babu Raghuvanshi vs. State of MP [(2004) 7 SCC 490],* considered an interesting point whether a charge can sustain judicial scrutiny when the 'order' is not mentioned therein. The Apex Court opined that for bringing an application under section 7 of the EC Act, essential requirement is an 'order', the violation of which is alleged. However, in the said case, the Apex Court found that the said 'order' was neither shown before the trial court nor before the High Court. The Apex Court did not set aside the charge for the said reason. The Apex Court remitted the matter to the High Court to hear the matter afresh. The parties were permitted to place materials in support of their respective stand. The State was given liberty to file materials to show as to which “order” was violated. It was further observed that if such material is placed, it must be examined in accordance with law. This judgment of Apex Court in *Prakash Babu Raghuvanshi (supra)* has not been considered by this Court while deciding the cases of *Hema Bhadoriya (supra)*.

15. The matter may be examined from yet another angle. In *(2011) 9 SCC 234 (Santosh Kumari vs. State of Jammu and Kashmir and others),* the Apex Court opined that Criminal Procedure Code is a procedural law. It is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but other not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable cases. The Apex Court opined that for this reason provisions like Sections 215 and 464 are there in CrPC. It is thus clear that absence of a charge is a curable defect. The object of framing charge is also considered in *Santosh Kumari (supra)*. It is held that object of the charge is to give the accused notice of the matter he

is charged. Therefore, if necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formla of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for.

16. In view of the principle laid down by Supreme Court, it can be safely concluded that if particular of "Order" is not mentioned in the charge, the charge should not be mechanically set aside. The necessary directions may be issued to specify the 'order' in order to give a clear picture to the accused about the allegations mentioned against him. This is necessary to attract section 7 of the EC Act. It being a curable defect may be permitted to be corrected. In *(2014) 8 SCC 340 (Chandra Prakash vs. State of Rajasthan),* the Apex Court again opined that the purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail.

17. In *K. Prema S. Rao vs. Yadla Srinivasa Rao [(2003) 1 SCC 217],* the Apex Court held that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Apex Court relied on *(2004) 5 SCC 334 (Dalbir Singh vs. State of UP); (2009) 6 SCC 372 (State of UP vs. Paras Nath Singh)* and *(2009) 12 SCC 546 (Annareddy Sambasiva Reddy vs. State of AP).*

18. If said judgments are considered in its proper perspective, the inevitable conclusion would be that if "order" is not shown in the charge, it is a curable defect. In *(2014) 11 SCC 538 (CBI vs. Karimullah Osan Khan),* the Apex Court considered Section 216 of CrPC. It opined that powers of court under section 216 are very wide. Even

after completion of evidence, arguments being heard and judgment being reserved, the court can alter or add any charge. In this view of the matter, the court below can very well examine whether there exists "Order" and if it exists, it can modify the charge No.3 accordingly. In view of judgment of *Prakash Babu Raghuvanshi (supra),* the matter needs to be remitted back to the trial court to frame the charge properly. The trial court has power to specify the charge at any stage of the proceedings. Thus, the judgments of *Hema Bhadoriya, Kunwar Singh Bhadoriya, Jodh Singh and Mahesh Chourasiya (supra)* are distinguishable to the extent the FIR/charges were quashed in those cases because of non-mentioning of the "order". The judgment of *Hema Bhadoriya (supra)* was passed without considering the judgment of Supreme Court in *Prakash Babu Raghuvanshi (supra)*. In the said judgments, this Court has not considered the aspect of curability of charge. Hence, to that extent, the said judgments are distinguishable.

19. In the result, in my view, if "order" is not mentioned in charge No.3, charge sheet cannot be set aside on this ground. I deem it proper to direct the court below to re-frame charge No.3 by mentioning "order", which is allegedly violated by the petitioner. In the interest of justice, it is made clear that if prosecution is unable to show any order, which is allegedly violated by the petitioner, it will be open for the court below to exonerate the petitioner from the charge No.3 without putting him to any further trial.

20. The next question raised by the petitioner is that she is President of the society and, therefore, in view of Sections 10(1) and 10(2) of the EC Act, she cannot be arrayed as an accused in the FIR.

21. A plain reading of charge shows that it is specifically alleged that the petitioner being President of the society has dishonestly used the wheat and kerosene

for her own use rather distributing this material to public on the price fixed by the Government. Shri Bahirani placed reliance on Sections 10(1) and 10(2) of the EC Act. Section 10 of the EC Act basically deals with the offences by the companies. Admittedly, the cooperative society, of which the petitioner is President, is not a company. The allegations against the petitioner in charge No.1 are specific. The nature of petitioner's involvement can be established by prosecution by leading evidence. At this stage, it cannot be said that charge against the petitioner is not made out. In *(1984) 4 SCC 352 (Sheoratan Agarwal v. State of MP),* the Apex Court considered the scope of Section 10 of the EC Act. The Apex Court opined as under:-

> *"Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person in charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. S.10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company."*
>
> *(Emphasis Supplied)*

This judgment is again followed by Supreme Court in *(2000) 1 SCC 1 (Anil Hada vs. Indian Acrylic Ltd.).* As per this judgment, it is clear that any one or more or all of them may be prosecuted and punished. Thus, at this stage, I am unable to agree with the contention that the petitioner cannot be arrayed as an accused in the FIR. Although Shri Bahirani relied on the judgment of Supreme Court in *Sham Sunder (supra)*, a plain reading of this judgment shows that the Apex Court was dealing with certain provisions of Indian Partnership Act, 1932.

The Apex Court opined that there are cases where partners are merely sleeping partners. In that context, the said judgment was delivered. In para 10 of the said judgment, it is mentioned that when prosecution establishes that the requisite condition mentioned in sub-section (1) is established, the charge can be said to be established. Needless to mention that prosecution can establish it only when evidence is permitted to be led. It is noteworthy that judgment of *Sham Sunder (supra)* is arising out of a final judgment of Special Court. The adjudication was not on an interlocutory stage or at the stage of framing of charge. So far the judgment of *Vimla Devi (supra)* is concerned, it considered various statements, Panchnama and then gave a finding on facts. I am afraid, it is beyond the scope of interference at this stage in this proceeding filed under Section 482 CrPC. The Apex Court made it clear that in a proceeding under Article 226 of the Constitution/under Section 482 CrPC, this Court is not obliged to examine the correctness of allegations. If allegations are accepted on its face value and yet no charge/offence is made out, interference can be made. This Court cannot conduct a roving enquiry or marshal the evidence at this stage. The Apex Court in *(2012) 9 SCC 460 (Amit Kapoor vs. Ramesh Chander and another),* laid down broad parameters for examining a charge. Relevant portion reads as under:-

> *"11. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
>
> *14. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its*

> *quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*
>
> *15. Where the charge-sheet, report under Section 173(2) CrPC, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge."*

In *Vimla Devi (supra),* the said principles laid down by Supreme Court have not been considered and, therefore, this judgment is distinguishable. The judgment in *Piyush Kumar Gupta (supra)* cannot be applied at this stage. The said judgment is related with a Director of a company. In view of provisions of Companies Act, interference was made. The said judgment has no application in the facts and circumstances of this case.

22. Thus, I am unable to hold that the petitioner cannot be arrayed as an accused in the FIR.

23. The next contention of Shri Bahirani is that since FIR talks about violation of a special statute (EC Act), the provisions of IPC cannot be applied. Reliance is placed on *Pepsico India Holdings (Pvt.) Ltd. (supra).* Before dealing with this, it is apt to quote section 5 of IPC, on which heavy reliance is placed by Shri Bahirani. It reads as under:-

> "***5. Certain laws not to be affected by this Act-*** *Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law."*
>
> *(Emphasis Supplied)*

A microscopic reading of this provision shows that nothing in IPC would affect the provisions of any Act *for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India.* Section 5, in no uncertain terms, makes it clear that it is applicable relating to the provisions which are meant for punishing mutiny and desertion of officers, soldiers, sailors or airmen. This is trite law that when the words of Statute

are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. This view is taken by Supreme Court in catena of judgments including *(1992) 4 SCC 711 (Nelson Motis v. Union of India).* In "Law of Crimes and Criminology" by R.P.Kathuria (published by Mr. Pradeep Nijhawan for Vinod Publishing House), it is opined that "the operation of the provisions of the Penal Code cannot be cut down by a later special law dealing with the same offences as has been dealt with by the Penal Code and in such cases the offender can be prosecuted under the penal Code as well as under the special law." The author relied on *1957 Cr.LJ 899 (DB); 1956 Cri.LJ 100 (DB); 1954 Cri.LJ 464 (DB); 1953 Cri.LJ 932.* For this reason, I am unable to hold that merely because one charge relates with EC Act, the applicant cannot be made accused in relation to other charge under other provisions of IPC. In *Pepsico India Holdings (Pvt.) Ltd. (supra),* the Court has not dealt with the above interpretation of Section 5 of IPC. At the cost of repetition, in my view, said provision is restricted to certain purpose mentioned herein above. Para 37 of judgment of said case shows that certain petition of Special Act eclipsed provisions of Sections 272 and 273 of IPC. Here, Section 7 of the EC Act prescribes a different offence. Sections 409 and 420 IPC even othrwise do not eclipse Section 7 of the EC Act. For this reason also, the judgment of *Pepsico India (supra)* is of no assistance to the petitioner.

24. Lastly, it is contended that Sections 409 and 420 IPC are not attracted. In my view, it is not proper to form any opinion at this stage. It is seen that in *Mahesh Chourasiya (supra),* this Court considered section 21 IPC in relation to a fair price shop. In my humble opinion, Section 409 IPC is not confined to "public servant" only, it is applicable to banker, merchant, broker, attorney or

agent also. The prosecution while leading evidence can establish that the petitioner is an agent or falls in some other category mentioned in Section 409 IPC. At this stage, it cannot be said that Sections 409 and 420 IPC are not attracted. A finding in this regard can be given only after recording of evidence. In *AIR 1925 PC 130 (Begu v. Emp.),* the Privy Council opined as under:-

> *"A man may be convicted of an offence, even though there has been no charge in respect of it, provided the evidence is such as to establish a charge that might have been made."*

In *AIR 1958 SC 141 (Nani Gopal Biswas v. Municipality of Howrah),* the Apex Court applied and followed the case of *Begu (supra).* Same principle is laid down by Supreme Court in *AIR 1961 SC 578 (State of Bombay vs. S.L.Apte)* and *AIR 1962 SC 1821 (R.K.Dalmia vs. Delhi Administration).* In the light of aforesaid, at this stage, I am unable to hold that charge framed against the petitioner is not in accordance with law.

25. To sum up, the interference is warranted only to the extent in charge No.3, the existence of "order" is not mentioned. The trial court for this purpose shall follow the direction given in para No.19 above. To this extent, petition deserves to succeed. The rest of the charges are upheld. Petition is disposed of. No cost.

(Sujoy Paul)
Judge

(yog)