

IN THE HIGH COURT OF MADHYA PRADESH :
BENCH AT INDORE

S.B.:- Hon'ble Smt. Justice S.R. Waghmare

M.Cr.C. No.9294/2015

Dinesh Babu Garg S/o Narayandas Garg

vs.

State of M.P.

Shri Pranay Ojha, learned Counsel for the petitioner.
Ms. Pritha Moitra, learned Counsel for the respondent-
State.

JUDGMENT

(Passed on 30/03/2016)

By this petition under Section 482 of Cr.P.C. the petitioner Dinesh Babu Garg is aggrieved by order dated 10.09.2015 passed by the Sessions Judge, Ratlam in Criminal Case No.2146/14 dismissing the application of the applicant filed under Section 91 of the Cr.P.C.

02. Briefly stated the facts of the case are that the respondent was being proceeded for offence under Sections 354, 354A, 354 (D)(1), 506 & 341 of IPC and the matter was fixed for framing of charges. When on 15.09.2014, the accused filed an application under Section 91 of the Cr.P.C. for taking into consideration the enquiry report dated 21/10/2014. The enquiry report pertains to the complaint made against the accused and the report was filed. The application was however dismissed by the trial Court and the revision

had been filed by the accused petitioner. The revision was also dismissed and hence the revision under Section 482 of the Cr.P.C.

03. Counsel for the petitioner has candidly admitted that this is in the nature of second revision. Counsel urged that it was a case of false implication and the application under Section 91 of the Cr.P.C. was of utmost importance to his defence. Counsel vehemently urged the fact that the prosecutrix was used to making such complaints and since it was a case of false implication; it was necessary to produce the enquiry report which exonerates the present accused persons and hence it was necessary that the report be taken on record and perused before the framing of charge. However, the trial Court as well as the revisional Court have held that it was a defence document and need not be considered. Counsel relied on Rakesh Singh Narwaria, Smt. Girja Narwaria vs. State of MP [2015 (IV) MPJR 187] to indicate that at the stage of framing of charge documents of the defence can be looked into if they have bearing on the issue. But at the stage of framing charge the papers on which prosecution relies should be taken into consideration. And Counsel submitted that although the Court is not expected to go deep into the probative value of the material on record; what needs to be considered is whether there are strong grounds for

presuming that the offence has been committed, then the trial Court can always look into the defence documents. Counsel prayed that the petition be allowed.

04. Per contra Counsel for the respondent-State has vehemently supported the orders of the Courts below and categorically stated that the matter pertains to an enquiry which was held by the railway police and has nothing to do with the present offence. If at all the petitioner wanted to introduce the same he could have done so at the stage of defence and the trial Court as well as revisional Court has relied on Sethuraman B. Rajamanitham (2009) 5 SCC 153 to state that the application under Sections 91 and 311 of the Cr.P.C. were interlocutory and a revision was not maintainable against the interim applications and on this ground also the trial Court has rightly rejected the application. Counsel prayed that the petition be dismissed.

05. On considering the above submissions I find that the stage at which the application is made is important and at the time of framing of charge; what is required to be seen is whether prima facie case is made out and the probative value or the merits of the case cannot be gone into at this stage. However, the petitioner can always produce the said document in his defence at the time of his evidence. Prima facie if the trial Court finds that there is material to frame a charge

then it must do so.

06. Hence under the circumstances, it would be profitable to rely on **State of MP Vs. SB Johari and others: 2000(2) MPLJ 322**, whereby the Court held thus:

“It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed.”

(Also see Umar Abdul Sakoor Sorathia vs. Intelligence Officer, Narcotic Control Bureau: 2000(1) SCC 138; State of Maharashtra and other vs. Somnath Thapa and others: 1996(4) SCC 659).

07. In view of the above, the petition is dismissed as being without merit, but needless to say that the document can always be produced by the petitioner, in defence evidence, if he deems it necessary.

CC as per rules.

(Mrs. S.R. Waghmare)
Judge

soumya