

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

MISC. CRIMINAL CASE No. 12189 of 2016

BETWEEN:-

- NATIONAL STEEL AND AGRO INDUSTRIES LIMITED
1. VILLAGE SEJWAYA, GHATABILLOD, DISTT. INDORE
(MADHYA PRADESH)
P. SHIKRISHNA OCCUPATION: M/S NATIONAL STEEL
2. AND AGRO INDUSTRIES LIMITED VILLAGE SEJWAYA,
GHATABILLOD, (MADHYA PRADESH)
N.K. JAIN OCCUPATION: M/S NATIONAL STEEL AND
3. AGRO INDUSTRIES LIMITED VILLAGE SEJWAYA,
GHATABILLOD, (MADHYA PRADESH)

.....APPLICANTS

*(SHRI V.K. JAIN - SENIOR ADVOCATE ALONGWITH SHRI
VAIBHAV JAIN - ADVOCATE)*

AND

MADHYA PRADESH POLLUTION CONTROL BOARD
THROUGH A.K. BISEN ASSISTANT ENGINEER
PARYAVARAN PARISAR, E-5, ARERA COLONY,
BHOPAL/REGIONAL OFFICE, INDORE (MADHYA
PRADESH)

.....RESPONDENT

(BY SHRI VIVEK SHARAN - ADVOCATE)

Reserved on : 03.08.2023

Pronounced on : 18.08.2023

*This petition having been heard and reserved for order, coming
on for pronouncement this day, **Hon'ble Shri Prakash Chandra Gupta***

pronounced the following:

ORDER

This petition u/S 482 of Cr.P.C., filed by the applicants/accused persons against the order dated 14.10.2016 passed by learned Special and Additional Sessions Judge, Dhar in criminal revision No.1300016/2016 affirming the order dated 27.05.2016 passed by JMFC, Dhar in criminal case No.2171/2011, whereby the learned trial Court had framed charge against the applicants u/S 43, 44 and 47 of Water (Prevention and control of pollution) Act, 1974 (hereinafter referred as water act).

2. Brief facts of the case are that the respondent board has filed a complaint against the applicants u/S 24, 25, 26, 43, 44 and 47 of the Water Act that accused No.1 Company, established an industry at village - Sejwaya, Ghata Billod, Distt - Dhar, which has 4 units namely, CRM Division, CGL Division, Metal Division and Captive Power Plant. The accused persons make cold rolled steel, colour coated steel, galvanized coil and electricity production from gas based captive plant, lead ingot and aluminium ingot. CRM and CGL division are mainly water polluting and produce hazardous waste. Machinery and sewage treatment plant has been installed for treatment of polluted water. After those treatment, the water is placed in the solar evaporation pond in the industry's premises. Consent letter (Annexure P-3) issued by the complainant to the accused No.1. On 26.07.2010, as per condition No.4 of the consent letter, the polluted water after being treated was to be used in the premise itself and it was not at all to be discharged outside. On 24.01.2011, a team conducted inspection and found that the discharge of water was outside and complete violation of the

aforesaid condition was found coupled with other violation of the conditions.

3. Before framing of charge, the complainant had examined Ashok Kumar Bisen (PW-1), Rakesh Kumar Shrivastava (PW-2), Dr. Alok Saxena (PW-3) and Dr. Harish Wankhede (PW-4). After hearing both the parties, the learned trial Court had passed impugned order as well as framed charge against the applicants, which is affirmed by the Revisional Court.

4. Learned counsel for the applicants submits that no case is made out against the applicants for the alleged violation of the act, even as per the test report of the respondent, there is no breach of the term of the consent and the alleged sample of discharged affluent is within the specified technical specification. The applicants have all necessary installation as per the consent letter issued by the respondent for the treatment of the polluted water. The learned trial Court as well as the Revisional Court have acted in an illegal and perverse manner in not considering the procedural defects and non-observation of the statutory guidelines by the respondent in filing the present complaint. The Courts below have illegally held that a prima facie case has been made out against the applicants and that to undergo trial to defend the same. Both the Courts below have not assessed the statement of witnesses as well as documentary evidences. While the Courts below should have given their clear findings on the grounds of discharge so raised by the applicants. Therefore, impugned order is liable to be rejected.

5. On the other hand, learned counsel for the respondent has supported the impugned order as well as framing of charge against the

applicants.

6. I have heard learned counsels for the parties and perused the records.

7. It appears pertinent to reproduce here Sections 227 and 228 of Cr.P.C, which runs as under:-

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he

pleads guilty of the offence charged or claims to be tried.”

8. The Apex Court in the case of ***Vijayan V State Of Kerala [(2010) 2 SCC 398]*** has held in Paragraph 14 as under:-

"14. In a recent decision, in the case of Soma Chakravarty vs. State through CBI, (2007) 5 SCC 403, this Court has held that the settled legal position 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. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge."

9. In the case of ***Asim Shariff V National Investigation Agency [(2019) 7 SCC 148]***, the Apex Court in Paragraph 19 has observed as under:-

"19. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while

considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

10. In the case of ***State of Karnataka Lokayukt Police Station Bengaluru V MR Hiremath [(2019) 7 SCC 515]***, the Apex Court in Paragraphs 22 and 23 has observed as under:-

"22. The High Court has in the present case erred on all the above counts. The High Court has erred in coming to the conclusion that in the absence of a certificate under Section 65B when the charge sheet was submitted, the prosecution was liable to fail and that the proceeding was required to be quashed at that stage. The High Court has evidently lost sight of the other material on which the prosecution sought to place reliance. Finally, no investigation as such commenced before the lodging of the first information report. The

investigating officer had taken recourse to a preliminary inquiry. This was consistent with the decision in Lalita Kumari.

23. *The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the State of Tamil Nadu v N Suresh Rajan, advertent to the earlier decisions on the subject; this Court held :*

“29...At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. From the principles laid down by the Apex Court, it appears that

at the stage of framing of charge, the Court will presume the documents put on record to be correct and has to be considered whether these prima facie disclose offence against the accused persons on record. At that stage, the Court is not expected to go deep into the probative value of the material available on record. Statement of witnesses are not required to be examined minutely at this stage.

12. In the instant case, considering the statement of complainant's witnesses and as well as the documentary evidence, it appears that there is sufficient material to frame the alleged charge against the applicants. Objections raised by the applicants can be decided on the merit and this stage on the ground of objections raised by the counsel for the applicants, they cannot be discharged. The learned trial Court as well as the Revisional Court have not committed any error in passing the impugned order. The impugned order does not suffer from any perversity, illegality and impropriety. Therefore, no interference is required in the impugned order. Hence, the petition sans merits and is liable to be dismissed.

13. Accordingly, this petition filed under Section 482 of Cr.P.C. is **dismissed.**

(PRAKASH CHANDRA GUPTA)
JUDGE