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

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 26th OF JUNE, 2023

CRIMINAL REVISION No. 2391 of 2023

BETWEEN:-

**MANALI D/O SUBASH CHANDRA AGARWAL,
AGED ABOUT 39 YEARS,
OCCUPATION: BUSINESS
R/o. 175 VIDHYA NAGAR, DISTRICT INDORE (MADHYA
PRADESH)**

.....PETITIONER

(SHRI PRAMOD C. NAIR - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION AMBEDKAR NAGAR,
DISTRICT INDORE. (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI GOURAV RAWAT - DY. GOVT. ADVOCATE)

.....
*This revision coming on for orders this day, the court passed the
following:*

ORDER

With consent of the parties heard finally.

This criminal revision under Section 397/401 of Cr.P.C. has been filed by the petitioner being aggrieved by the order dated 23.03.2023 passed by the Fifth Additional Sessions Judge, Dr. Ambedkar Nagar, District Indore, wherein charges under Section 420 of IPC in alternate Section 420/34, 409 of IPC, 1860 has been framed against the petitioner.

2. The petitioner has filed this revision petition on various grounds and

submitted that learned trial Court has wrongly framed the charges without considering evidence available on record. During the course of arguments, Shri Nair has contended that the case against the applicant along with one co-accused Mahesh Mittal has been falsely framed by FIR No.229/2019 on the basis of written complaint of the complainant. It is further submitted that in the course of investigation the charge of Section 409 of IPC was enhanced as per allegation of prosecution the appellant along with her partner had executed the sale agreement with the complainant and according to agreement it was contracted that plot no.75 and 76 will be sold to complainant and in accordance with the agreement, Rs.10.00 lakhs was received as advance. The said agreement was executed on 06.05.2016, but the sale deed could not be executed due to non obtaining completion certificate from RERA Real Estate (Regulation and Development) Act, 2017.

3. Learned counsel for the petitioner has also contended that in the bail petition, Hon'ble High Court has opined that *prima facie*, the dispute is purely of civil nature, therefore, the charges framed against the petitioner is not in accordance with law, hence the charges framed by learned trial Court are therefore, not sustainable and it is requested to set aside the same.

4. Learned counsel for the State vehemently opposed the contentions of the petitioner and submitted that defence of the petitioner cannot be considered at the stage of framing of charges. The opinion expressed in bail order is not binding upon the merits. The case is purely related to cheating and breach of trust. Hence there is no infirmity or illegality in the order passed by the learned trial Court accordingly, the revision petition filed by the petitioner deserves to be dismissed.

5. In the considered opinion of this Court at this stage is that the only

point of determination in this case is as to whether the order of learned trial Court dated 23.03.2023 is suffering from incorrectness, illegality or impropriety?

6. In the light of the revision petition and the arguments advanced by learned counsel for the parties, the impugned order of framing of charges has been scrutinized in purview of the available record. As per prosecution case, the execution of agreement of sale between the petitioner and the accused is an admitted fact. It is also an admitted fact that during execution of agreement, the petitioner has obtained Rs.10.00 lakhs from the complainant as consideration of sale of property. On perusal of the record it emerges that the said consideration of Rs.10.00 lakhs was only returned when the order of bail petition was passed in favour of the petitioner. It is also unearthed by statement of the prosecution witnesses recorded under Section 161 of Cr.P.C the petitioner had denied to execute the said sale deed in spite of continuous requests. Keeping advance money of Rs.10.00 lakhs for a long time without any intention to execute the sale deed creates the dishonest intention to deceive the complainant which is a vital ingredient of cheating. So far as charges under Section 409 of IPC is concerned, as per prosecution case the petitioner is working as attorney or agent of her father hence the charge framed under Section 409 of IPC is also warranting no interference.

7. As far as the documents regarding defence are concerned at the stage of framing of charges the defence of the accused could not be considered as per the law. In this regard the law laid down by Hon'ble Apex Court in the case of *State of Orissa vs. Debendranath Padhi* reported as *2004 lawsuit SC 1408* is worth referring here:

"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."

8. The aforesaid stand of the Full Bench of Hon'ble Apex Court has also been endorsed by Hon'ble Apex Court in another case rendered in *VLS Finance Limited vs. S.P. Gupta and another* reported as *2016 Law suit SC 111*. Further in this context, the land mark judgment of Hon'ble Supreme Court rendered in the case of *Maharashtra State vs. Priya Sharan Maharaj & Ors.* reported in *AIR 1997 SC 2041* is propitious to reproduce here:

"The law on the subject is now well settled, as pointed out in *Niranjan Singh Punjabi v. Jitendra Bijjaya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47 : AIR 1990 SC 1962] that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

9. In this respect the learned trial Court has also referred to the judgments of Hon'ble Supreme Court rendered in *Sanghi Brothers (Indore) Pvt.Ltd vs Sanjay Choudhary & Ors*, reported in *(2008)10 SCC 681*, *Soma Chakraborty vs. State*, reported in *(2007)5 SCC 403* and *Onkar Nath*

Mishra & Ors vs State (NCT Of Delhi), reported in (2008) 2 SCC 561. In these judgments, it is well settled by Hon'ble Supreme Court that at the stage of framing of 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.

10. 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. At the juncture of framing of charges, the Court has to *prima-facie* examine whether there is sufficient ground for proceeding against the accused. The Court is not required to evaluate or analyse the evidence in order to arrive at the conclusion that the materials furnished by prosecution are sufficient for convicting the accused or not. In the case at hand the finding of learned trial Court regarding *prima-facie* case against the accused appears to be correct.

11. On this aspect the view of Hon'ble Apex Court rendered in a recent case of *State through Dy. Superintendent of Police vs. R. Soundirarasu etc.* reported as *AIR 2022 SC 4218* is worth mentioning here:

"Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

12. In the light of the aforesaid principles of law and factual matrix of the case, there is no illegality, perversity or infirmity found in the impugned order of the learned trial Court regarding framing of charges against the petitioner, hence no interference is warranted by this Court. As a result thereof, this revision petition, being devoid of merits, is dismissed and the impugned order dated 23.03.2023 is hereby affirmed.

Certified copy, as per rules.

sumathi

**(PREM NARAYAN SINGH)
JUDGE**

