

A SANGHI BROTHERS (INDORE) PVT. LTD.

v.

SANJAY CHOUDHARY AND ORS.
(Criminal Appeal No.1578 of 2008)

OCTOBER 3, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]

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Code of Criminal Procedure, 1973 – ss. 227, 228, 239, 240 & 245 – Charges of cheating and breach of trust framed by Trial Court – Quashed by High Court after formulating an opinion about the prospect of conviction – Propriety of – Held: Not proper – While considering framing of charges, Court is required to consider whether material brought on record could reasonably connect the accused with the trial – Nothing more is required to be inquired into – Test of prima facie case is to be applied – At that stage, there is no necessity of formulating opinion about the prospect of conviction – Penal Code, 1860 – ss. 420 and 406 r/w s.34.

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The Trial Court, on the complaint of appellant, framed charges against the Respondents under Sections 420 and 406 IPC read with Section 34 IPC. It was the allegation of appellant that respondents took 45 dumper vehicles and 4 light commercial vehicles on lease from them, and in violation of the agreement between them, illegally sold off 8 vehicles to other parties with ulterior motive, thus committing the offences of cheating and breach of trust.

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Respondents filed a criminal revision petition. The High Court upon considering the submission of respondents that no charge under Sections 420 and 406 IPC was clearly made out against them on the basis of evidence on record and it was also not so unimpeachable that if it was not rebutted then a conviction could be based on it,

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quashed the criminal charges against them and thus allowed the criminal revision petition. Hence the appeal. A

Allowing the appeal, the Court

HELD:1.1. The Court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. At the stage at which the Court is required to consider the question of framing of charge, the test of a *prima facie* case is to be applied. [Paras 8, 10] [212,B-C] B C

1.2.The instant case is not one where the High Court ought to have interfered with the order of framing the charge. Even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. [Para 11] [212,F-G] D

State of Maharashtra and Ors. v. Som Nath Thapa and Ors. (1996) 4 SCC 659; State of Karnataka v. L. Muniswamy (1977) 2 SCC 699; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia (1989) 1 SCC 715; State of West Bengal v. Mohd. Khalid (1995) 1 SCC 684 and R.S. Nayak v. A.R. Antulay (1986) 2 SCC 716 – relied on. E

CASE LAW REFERENCE F

(1996) 4 SCC 659	relied on	Para 7	
(1977) 2 SCC 699	relied on	Para 8	
(1989) 1 SCC 715	relied on	Para 8	
(1995) 1 SCC 684	relied on	Para 8	G
(1986) 2 SCC 716	relied on	Para 9	

A From the final Judgment and Order dated 5.10.2006 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Revision No. 865 of 2006

K.T.S. Tulsi, Buddy A. Ranganadhan and A.V. Rangam for the Appellant.

B Dr. Rajeev Dhavan, S.K. Gambhir, S.K. Puri, Priya Puri, V.M. Chauhan and H.K. Puri for the Respondents.

The Judgment of the Court was delivered by

C **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court, Indore Bench allowing the Criminal Revision Petition filed by the respondents. Challenge in the Criminal Revision Petition was to the order dated 14.8.2006 passed by learned Judicial Magistrate, First Class, Indore in Criminal case No.2114 of 2003. By the said order charges were framed against the respondents. The learned Judicial Magistrate directed framing of charge for offence punishable under Sections 420, 406 read with Section 34 IPC.

3. Background facts as projected by appellant in a nutshell are as follows:

F The appellant-company is a registered company dealing with the sale of auto vehicles at Indore and respondents are Directors of the Chetak Construction Ltd. a registered company having its Head Office at Chetak Chamber, R.N.T. Mark, Indore and accused No.3 is the Secretary of that company. In the year 1988-89 accused approached the complainant company for obtaining lease of Tata dumpers and light commercial vehicles for a specific period on monthly lease rent basis. Respondents assured complainant company that as per the agreement they will pay monthly lease rent without any default and to support their claim, they will also furnish back guarantee for due performance of the condition of the contract. In view of that proposal,

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agreements were executed between the parties on 13.5.1988, 14.11.1988 and 25.3.1989 for delivery of 25 dumpers, 10 dumpers, 20 dumpers and 4 light commercial vehicles and accused persons took the delivery of the aforesaid vehicles from the complainant and also agreed for payment of the monthly lease rent for 36 months. For the due performance of agreement, necessary documents were executed by the accused persons in favour of the complainant. After some time, complainant came to know that accused No.4 was unable to pay, him lease rent according to the agreement. Then complainant called accused No.1 and 2 to execute personal guarantee bonds in favour of the complainant and after some persuasion, so called personal guarantee bonds were executed by the accused Nos. 1 and 2 in favour of the complainant for due performance of the agreement on 6.12.1991. They also gave collateral security in favour of the complainant of a property belonging to M/s Choudhary Builders Private Ltd. and also produced board resolution dated 6.2.1990 to the complainant. Complainant was unable to get any rent in time from the accused persons and also found that applicants/accused in violation of the condition of the agreement have illegally sold eight vehicles to other parties with ulterior motive, thus committing criminal breach of trust also and had cheated the complainant. On these allegations, complainant through its Manager filed a complaint under Sections 420 and 406 IPC against the respondents. Before the trial Court, learned trial Magistrate after taking the cognizance against the accused recorded before charge evidence and on consideration of before charge evidence by order dated 14.8.2006 ordered for framing of the charge as noted above.

The order framing of charge was questioned before the High Court in the revision petition. After noticing the stands of the petitioners before it and the respondent who is the present appellant, the High Court noted as follows:

“All these cases are distinguishable with the facts of the present case. In the present case, applicants are not praying quashment of the proceedings under the

A provisions of Section 482 of the Criminal Procedure Code. The applicants/accused came up before this Hon'ble Court against the order of framing of the charge and on the basis of the prima facie evidence recorded before charge and is trying to assail the findings of the trial Court and submits that no charge under Section 420 and 406 IPC is clearly made out against the applicants on the basis of evidence on record and it is also not so unimpeachable that if it is not rebutted then a conviction can be based on it."

C The High Court was of the view that framing of charge was not sustainable.

D 4. In support of the appeal, learned counsel for the appellant submitted that the conclusions of the High Court are clearly indefensible. It is not a requirement of law that the offence is not so unimpeachable and if it is not rebutted, conviction can be based on it.

E 5. Learned counsel for the respondents on the other hand submitted that the background facts have been rightly taken note of by the High Court to conclude that the framing of charge was not sustainable. It was pointed out that there was no intention of committing the alleged fraud as has been rightly held by the High Court. Part of the amount has been received and sale of vehicle was permitted and the bank guarantee was also encashed. Even if it is conceded that there was breach of contract at some point of time that was remedied because of the permission to sell vehicles and by encashment of the bank guarantee. The whole agreement was retrieved. In order to constitute fraud there must be some mental evil design. There is no question of any seminal intent as there was civil dispute and the same has been taken note of by the High Court, more particularly, with reference to the allegations.

H 6. By way of reply learned counsel for the appellant submitted that because of huge dues the appellant had the right of repossession which could have been exercised w.e.f. 6.1.1990

and on 8.2.1990 four personal bank guarantees were given by the respondents. Since that was not adequate, additional security was required and same was furnished by offering property security which was not owned by the respondents. This could be known only after the letter of the bank was received. The intention was very clear, because it was aimed at preventing the appellant from exercising the right of re-possession. It is not a case where the High Court conceded that there was no offence made out. Charges were framed and therefore the High Court should not have by the impugned order aborted the whole trial. The High Court is wrong in stating that there was no allegation of any criminal intention at the initial stage. It is pointed out that this aspect was explicitly stated in the complaint.

7. In *State of Maharashtra and Ors. V. Söm Nath Thapa and Ors.* (1996 (4) SCC 659) this Court observed as follows:

“Let us note the meaning of the word ‘presume’. In Black’s Law Dictionary it has been defined to mean “to believe or accept upon probable evidence”. (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law ‘presume’ means “to take as proved until evidence to the contrary is forthcoming”. Stroud’s Legal dictionary has quoted in this context a certain judgment according to which “A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged”. (Emphasis supplied). In Law Lexicon by P Ramanath Aiyar the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence; a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of

A framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

B 8. Sections 227, 239 and 245 deal with discharge from criminal charge. In *State of Karnataka v. L. Muniswamy* (1977 (2) SCC 699) it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for *presuming* the commission of offence by the accused. (Underlined for emphasis). The Court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* (1989 (1) SCC 715) and *State of West Bengal v. Mohd. Khalid* (1995 (1) SCC 684).

D 9. In *R.S. Nayak v. A.R. Antulay* (1986 (2) SCC 716) this Court referred to Sections 227 and 228 so far as they are relatable to trial. Sections 239 and 240 are relatable to trial of warrant cases and 245(1) and (2) relatable to summons cases.

E 10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of a prima facie case to be applied.

F 11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed.

H B.B.B.

Appeal allowed.