



NAFR

HIGH COURT OF CHHATTISGARH BILASPUR

CRMP No. 438 of 2017

Manish Khare S/o Shri S P Khare Aged About 41 Years R/o Arya Colony,
Tifra, Bilaspur District Bilaspur, Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh Through Police Station Chakarbhata, District Bilaspur,
Chhattisgarh.

---- Respondent

(Cause-title taken from Case Information System)

For Petitioner : Mr. Abhishek Sinha, Senior Advocate
assisted by Mr. Samrath Singh Marhas,
Advocate.

For Respondent/State : Ms. Madhunisha Singh, Deputy Advocate
General.

Date of hearing : 07.09.2023

Date of Judgment : 14.09.2023

Hon'ble Shri Ramesh Sinha, Chief Justice

C A V Judgment

1. Heard Mr. Abhishek Sinha, learned Senior Advocate assisted by Mr. Samrath Singh Marhas, learned counsel for the petitioner. Also heard Ms. Madhunisha Singh, learned Deputy Advocate General, appearing for respondent/State.

2. The present CrMP has been filed by the petitioner with the following prayers:

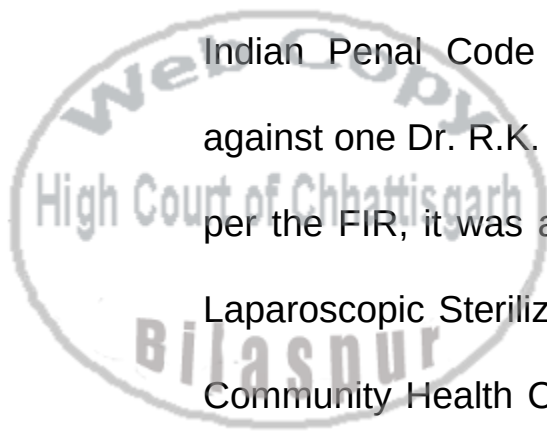
"i) That, this Hon'ble Court may kindly be pleased to



call for the records of the case in ST No.34/2015 pending before the Court of Additional Session Judge, Bilaspur, presided over by Shri Suresh Kumar Soni and after being satisfied quash the prosecution of the present petitioner, charge sheet and the order framing charges dated 29.11.2016 Annexure P/7 and the consequential orders of the ends of justice.

ii) Any other relief, as this Hon'ble Court may deem fit and proper may also be granted."

3. The facts of the case are that an FIR under Section 304A of the Indian Penal Code (for short, the IPC) was registered on 15.02.2015 against one Dr. R.K. Gupta and his team by Police Station Chakarbhata. As per the FIR, it was alleged that on 08.11.2014, Dr. R.K. Gupta performed Laparoscopic Sterilization Operation on many women at the camp held by Community Health Centre, Takhatpur at Nemichand Jain Cancer Hospital, Pandri, Sakri, Distt. Bilaspur (CG). It was the case of the prosecution that after operation, the women fell sick and rushed to hospital. Some of the women died and others took seriously ill and there was a negligence on the part of the Doctor and, therefore, an offence under Section 304(A) of IPC was registered against him. During the course of investigation, it was found that the women on whom sterilization operation was performed by the Doctor, had also been given a medical kit, which comprised of "Ciprocin 500" and "Ibuprofen" tablets. It was suspected that the medicine might have caused illness, the medicine was seized and sent for examination to Central Drug Laboratory, Kolkata, State Forensic Science Laboratory, Raipur,





Sriram Institute for Industrial Research, Qualichem Laboratories and National Institute of Immunology. In the report received, Ciprocin 500 tablets were found to be substandard, on the basis of assay and dissolution, which was not as per the prescribed norms under the Drugs and Cosmetic Act and the rules made thereunder. In all the reports, presence of Ciprofloxacin was found. In the report of State Forensic Laboratory, Central Drug Laboratory, Kolkata, Qualichem Laboratories and other laboratories, the drug did not find any chemical/poison, apart from the one report of National Institute of Immunology, which indicated Toxic Shock in rats within 24 hours. It is noteworthy to mention that National Institute of Immunology has subsequently, under Right to Information Act informed that they had not conducted any test and they were not authorized to conduct such a test. It is pertinent to mention that in the Postmortem Report of the deceased, no sign of poisoning was found. The same postmortem report opined septicemia and shock as cause of death. The viscera of the deceased have also turned negative for any chemical poisoning. However, on the suspicion of the drug being the cause of death, investigation was done in respect of supply and procurement of Ciprocin 500 tablets. The admitted facts are that Ciprocin tablets was manufactured by Mahavar Pharmaceuticals, Raipur, which had license under Form 26 to manufacture the drug. Kavita Laboratories, which had license to sell, stock and distribute the drug, bagged the tender for supplying the drug to the Chief Medical Officer, Bilaspur and as per the prosecution case, Kavita Pharmaceuticals which again is licensed manufacturer of the drug, supplied the drug to the Chief Medical officer, Bilaspur and received payment.

4. Mr. Abhishek Sinha, learned Senior Counsel for the petitioner



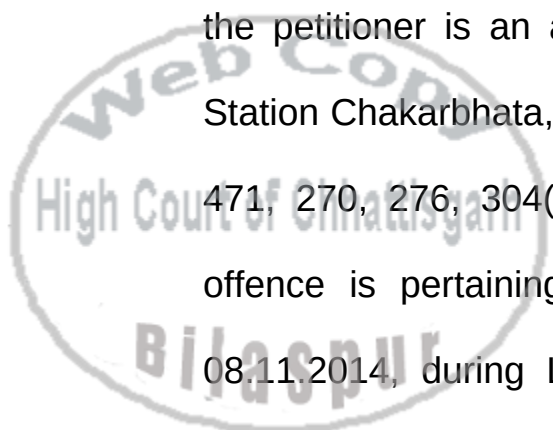
submits that even from the admitted facts, it is borne out that the Director and partner of Kavita Laboratories are Rakesh Khare and Rajesh Khare. It is Kavita Laboratories, which made the supplies of Ciprocin 500 to CMO, Bilaspur. As per the prosecution case, the petitioner is neither a Partner, Director or employee or in any manner, whatsoever, involved and responsible for the working of the firm, be it under the law or of facts, cannot be made liable for criminal prosecution. The entire prosecution case lacks any material indicating any overt act on part of the present petitioner, which may connect him with the prosecution case and the offence. The learned trial Court vide its order dated 29.11.2016 has framed a charge against the present petitioner in a mechanical manner, without application of mind and foreign to prosecution case and material available in the charge sheet u/s 420, 468, 471, 270, 276, 304(2), 308 IPC. It is further submitted that the entire prosecution case, even if it is taken as it is, does not disclose involvement of the present petitioner with the alleged offence and there is no material, whatsoever to proceed against the present petitioner or frame a charge for the alleged offence, hence this petition.

5. It is further submitted by Mr. Sinha that merely because the petitioner happens to be a brother of the co-accused Directors and Partner of Kavita Laboratories and Kavita Pharmaceuticals, the offences have been registered against the petitioner, is bad and illegal. The petitioner being Analytical Chemist with Kavita Pharma, which had neither manufactured nor supplied the drugs, cannot be made basis for prosecuting the petitioner, particularly, when the charge sheet does not disclose the specific act or overt act on part of the petitioner. There is no ingredient whatsoever available in the charge sheet/entire prosecution case to indicate any act on



the part of the petitioner, wherein he had dishonestly induced any person to deliver any property or valuable security, for his gain and so no offence under Section 420 of the IPC is disclosed against him. It is further submitted by Mr. Sinha that the petitioner is cooperating with the trial. It is further submitted that in the present case, there are 200 witnessess are there but only 23 witnessess have been examined till date. To support his contention, Mr. Sinha places reliance of the case passed by the Hon'ble Supreme Court in the case of ***Thermax Limited and Others vs. K.M. Johny and Others***, reported in ***(2011) 13 SCC 412***.

6. On the other hand, the learned State counsel, has submitted that the petitioner is an accused in Crime No. 350/2014 registered at Police Station Chakarbhata, District – Bilaspur for offence under Section 420, 468, 471, 270, 276, 304(2) and 308 of Indian Penal Code. The above said offence is pertaining to well-known incident, which was happened on 08.11.2014, during Laparoscopic Sterilization Operation camp on many women at Community Health Centre, Takhatpur at Nemichand Jain Cancer Hospital, Pendari, Sakri District – Bilaspur, in which as many as 13 women died on account of negligence of concerned Medical Officer and supplying substandard medicines, which was supplied by M/s Kavov Parma, 47 Industrial Estate, Tifra, Bilaspur (C.G.). It is also submitted that during course of investigation, the respondent/State have seized a certificate in Form 21(B) issued by the Licensing Authority, Bilaspur, in which, the name of the present petitioner was clearly mentioned as Partner of the M/s. Kavita Laboratories, Bilaspur. It is further submitted that the prosecution has also seized a certificate in Form 26 issued by the State Licensing Authority, Food and Drugs Administration, Raipur, whereby, the name of the present





petitioner has been approved as Technical Staff for 'on testing side'. It is further submits that the on the basis of the above-mentioned evidences, it is very clear that the present petitioner was a partner of M/s. Kavita Laboratories, Bilaspur and he was also performing the work as technical staff on testing side and the petitioner was fully aware about the standard of medicines which was supplied by M/s. Kavita Laboratories, Bilaspur during aforesaid sterilization camp. Thus, the contention of the petitioner is false and baseless and it is crystal clear that the petitioner is also involved in the present incident and looking to the sufficient material and evidence produced by the prosecution the learned trial Court has rightly framed charges against the present petitioner, which is just and proper, therefore, the same does not warrant any interference from this Hon'ble Court and the same is liable to be dismissed. To support her contention, Ms. Singh places reliance of the judgment passed by the Hon'ble Apex Court in the case of **Sajjan Kumar vs. Central Bureau of Investigation**, reported in **(2010) 9 SCC 368**, in which, it was held that at the initial stage, if there is a strong suspicion, which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. Further, in the case of **P. Vijayan v. State of Kerala**, reported in **(2010) 2 SCC 398**, it was held that on the basis of material on record, the Court could form an opinion it can frame the charges, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

7. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto.



8. From perusal of the return filed by the State, it is evident that during course of investigation, the respondent/State have seized a certificate in Form 21(B) issued by the Licensing Authority, Bilaspur, in which, the name of the petitioner was clearly mentioned as Partner of the M/s. Kavita Laboratories, Bilaspur. A copy of the certificate in Form 21(B) of the Drugs and Cosmetic Rules, 1945 issued by the Licensing Authority, Bilaspur is annexed in the return as Annexure R/1. The prosecution has also seized a certificate in Form 26 issued by the State Licensing Authority, Food and Drugs Administration, Raipur, whereby, the name of the present petitioner has been approved as Technical Staff for 'on testing side'. From the said documents, it is very clear that the petitioner was a partner of M/s. Kavita Laboratories, Bilaspur and he was also performing the work as technical staff on testing side and the petitioner was fully aware about the standard of medicines which was supplied by M/s. Kavita Laboratories, Bilaspur during aforesaid sterilization camp.

9. The Hon'ble Supreme Court in the case of **P. Vijayan** (supra), while dealing with the similar issue, observed as follows:

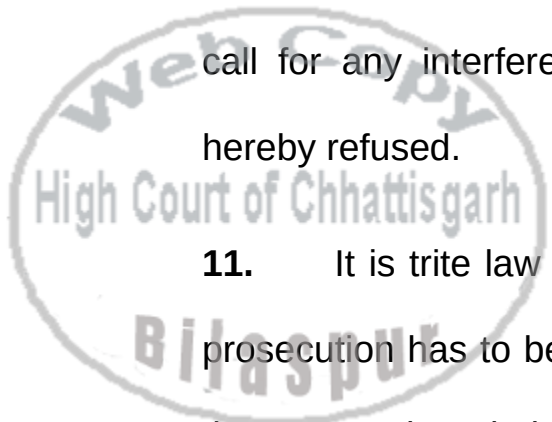
"15. In a recent decision, in the case of Soma Chakravarty v. State through CBI(2007) 5 SCC 403 this Court has held that the settled legal position is that if on the basis of material on record the Court could form an opinion it can frame the charges, though for conviction the conclusion is required 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 there for suspicion along, without anything more, cannot form the basis therefore or held to be sufficient for framing charge.”

10. Looking to the sufficient material and evidence produced by the prosecution the learned trial Court has framed charges against the present petitioner, which is just and proper, therefore, the impugned order does not call for any interference by this Court, hence quashing of the same is hereby refused.

11. It is trite law that at the stage of quashing, only the material of the prosecution has to be seen and the Court cannot delve into the defence of the accused and then proceed to examine the matter on its merit by weighing the evidence so produced. The disputed questions of facts in the case cannot be adjudged and adjudicated at this stage while exercising powers under Section 482 Cr.P.C. and only the *prima facie* prosecution case has to be looked into as it is. Evidence needs to be led to substantiate the defense of the accused. In the instant case, as specific allegation has been made by the prosecution and even supporting evidence are also available on record, I am of the opinion that *prima facie*, it cannot be said that no offence is made out against the petitioner. The prosecution has to be permitted to lead evidence against the petitioner as 13 women have lost their lives because of the substandard medicine which supplied by the M/s





Kavita Laboratories, Bilaspur in the said Sterilization Camp.

12. In view of the foregoing reasons and considering the case law of the Apex Court in case of **P. Vijayan** (supra), I do not find any good ground for any interference by this Court for quashing of impugned order as well as proceeding arising thereof against the petitioner.

13. The instant application under Section 482 Cr.P.C. is lack of merits and accordingly, dismissed. Interim order, if any, stands vacated.

14. Learned trial Court is directed to expedite the trial expeditiously preferably within a period of one year from production of the certified copy of this order without granting unnecessary adjournments to the parties, if there is no legal impediment.

15. The Registrar (Judicial) is directed to send a copy of this order to the Trial Court concerned for necessary information and compliance forthwith.

Sd/-

(Ramesh Sinha)
Chief Justice