

Ranganath Vs. The State of Karnataka, Represented by the Pl., Lokayukta P.S., Bidar

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Court : Karnataka Kalaburagi

Decided On : Feb-25-2015

Judge : K.N. Phaneendra

Appeal No. : Criminal Revision Petition No. 200071 of 2014

Appellant : Ranganath

Respondent : The State of Karnataka, Represented by the Pl., Lokayukta P.S., Bidar

Advocate for Def. : Sri. S.S. Kumman

Advocate for Pet/Ap. : Sri. R.S. Lagali

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 R/w 401 of Cr.P.C. praying to, set aside the order dated 25.08.2014 passed by the Principal District and Sessions Judge, Bidar in Special C.C.No. 38/2012 (Bidar Lokayukta P.S. Crime No. 6/2010), on the discharge application under Section 227 of Cr.P.C. and discharge the petitioner of all the charges.)

1. The petitioner who is arrayed as accused No. 1 in Special C.C.No. 38/2012 pending on the file of the Principal District and Sessions Judge, Bidar (Lokayukta

case) aggrieved by the order passed by the learned Special Judge Vide order dated 25.08.2014 in refusing to discharge the petitioner of the charges levelled against him is before this Court.

2. It is not in dispute that at the relevant point of time the petitioner was working as a Licensed Surveyor and one Mr. Nagesh was working as a Computer operator in the office of the Tahsildar at Basavakalyan in Gulbarga District.

3. The brief factual matrix that emanate from the records are that, a person by name Basavaraj S/o Channabasayya lodged a complaint on 10.08.2010 making allegations that his brother-in-law by name Asttik S/o Mallayya is a Mechanic residing at Aurangabad. There is a land bearing Sy.No. 52/A belonged to the father of Asttik by name Mallayya and after the death of the said Mallayya, the said Asttik wanted to get his name mutated in the revenue records pertaining to the said land. In fact, he entrusted the said work to the complainant and in that context he went to the office of the Tahsildar at Basavakalyan, and submitted an application along with necessary fee. Thereafter, in this context he went to the computer section of the said office and came to know that the file is with one Mr. Ranganath, Surveyor who is the petitioner herein. It is alleged that the petitioner told the complainant that the land has already been measured and as the complainant did not appear in time, the complainant has to make necessary application again with fee for the purpose of survey and for acceptance of the mutation etc. When the complainant asked why he has to pay the fee again then it is alleged that this petitioner has demanded a sum of Rs. 1,300/- by way of bribe assuring him that within one week he will get the work done. It is further alleged that on the same day an amount of Rs. 7,00/- was paid to him and accepted to pay the remaining amount of Rs. 500/- later the petitioner told the complainant that as soon as he pays the remaining amount of Rs. 500/- he would get the work done.

4. Being not satisfied with the attitude of the petitioner, the complainant went to the Lokayukta police and lodged a complaint. The Lokayukta police without registering any case on the basis of the above said allegations made against the petitioner, in order to confirm the allegations made in the complaint it appears the investigating officer sent the complainant once again along with a tape recorder the

conversation between himself and the accused petitioner. It appears, the complainant went along with a micro tape and recorded the conversation between himself and the petitioner and thereafter a complaint was registered on 10.08.2010. Subsequently, the investigating officer laid a trap against the accused person and even during the course of investigation the records disclose that no amount was recovered at the instance of the petitioner. Nevertheless a person by name Nagesh who was working as a Computer Assistant in the office of the petitioner alleged to have received the said bribe amount from the complainant on behalf of the petitioner. The said Nagesh has disclosed that he received the said amount on the instructions and information given by the petitioner. Therefore, on these allegations, after completion of the entire investigation, as the investigating officer did not feel to secure any sanction due to the accused/petitioner was already removed from the service, he filed the charge sheet, before the competent Court.

5. The Special Judge after going through the contents of the charge sheet has taken cognizance and ordered process against the petitioner. In pursuance of the same he appeared before the Court contested the proceedings and filed the application for his discharge as the said application was dismissed, the present petition is filed before this Court.

6. Sri R.S. Lagali, learned counsel for the petitioner fairly submits that, before the Trial Court no other grounds are urged seeking discharge of the accused except the ground that the petitioner was not a public servant as on the date of the commission of the alleged offences. Only on that ground, the Trial Court has considered the necessary materials on record and refused to discharge the accused. He further contends that though such grounds have not been taken up before the trial Court, it is the duty of the Court under Section 239 or under Section 227 of Cr.P.C. to apply its judicious mind to ascertain whether the contents of the charge sheet even if they are accepted on their face value, are sufficient to frame charges against the accused. Even if the grounds are not urged, if it is available to the accused, those can be urged at any stage by the accused. Therefore, he raises before this Court three points;

(a) The accused was not a public servant as on the date of commission of offence. Therefore no cognizance can be taken under the Prevention of Corruption Act against the petitioner.

(b) There was no work pending with the accused/petitioner as on the date of lodging of the complaint, therefore there was no opportunity to the petitioner to demand or accept any bribe from the complainant, therefore on merits also, the accused is entitled to be discharged from all the charges.

(c) The Investigation Officer without registering the case has commenced the investigation, which shows the interestedness, which is sufficient to hold that the entire proceedings are vitiated by serious illegalities.

7. So far as the first point concerned it is worth to refer the Judgment of this Court in the case between Sri N. Ereshi Vs State of Karnataka, reported in ILR 2012 KAR 1552, wherein this Court has held that;

Licensed Surveyor does fall within the ambit of Section 2(c) (i) of the Prevention of Corruption Act, 1988. Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of public duty is a public servant. In the matter on hand, the Licensed Surveyors are not paid fees by the State Government, but are paid fees by the persons on whose request the survey sketch is prepared under Sections 128 and 131 of the Karnataka Land Revenue Act. It is also held that any person who holds an office by virtue of which he is authorized or required to perform any public duty, is a public servant. The Licensed Surveyors are required to perform the public duty of preparing survey sketches entrusted to them by virtue of they being the Licensed Surveyors appointed under the Statute. Therefore, they squarely falls within the definition of public servant as he is performing the public duty.

In view of the above said decision, first point raised by the learned counsel is no more res-integra before this Court. Hence, the said point requires to be answered in the negative.

8. The second point raised by the learned counsel for the petitioner is that there was no work pending with the petitioner as on the date of filing of the complaint.

9. Countering the arguments of the learned counsel for the petitioner, Sri S.S. Kumman, learned counsel appearing for the Lokayukta strenuously contends that if the complaint averments are meticulously read, it clearly discloses that even after 23.07.2010 the Licensed Surveyor i.e. petitioner herein has further demanded money for the purpose of conducting the survey and also for accepting the mutation of the petitioners relative. Whatever may be the reason whether any work was pending with him or not, he poses himself to the complainant that he can do the work and get the work done in the office by means of further survey and demanded the complainant to pay Rs. 1,300/- in this regard.

10. The existence of any official work for demand of bribe is not a sine-quo-non to attract the provisions of Section 7 and 13

(1) (d) of the Prevention of Corruption Act of Section 7, if it is read with explanation, it gives an indication that even a public servant accepts or agrees to accept any gratification other than legal remuneration as a motive or reward for doing or for bearing to do any official act or for showing or for bearing to show in the exercise of his official functions, is said to commit such an offence.

The Explanation (c) explains what is legal remuneration:- it is not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organization, which he serves, to accept.

Therefore, unless a public servant proves the demand of Rs. 1,300/- was towards legal remuneration, it should be believed at this stage, the same amounts to illegal gratification.

Explanation (d) explains A motive or reward for doing: public servant receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

Therefore, even the public servant has no existing work with him pertaining to the complainant and he was not in a position to do any work but if he demands and accepts any gratification the provision is attracted.

Section 13(d) also does not speak about any official work to be pending, if it is shown that public servant, while holding the office abusing his position obtains for himself or for any body any valuable thing or pecuniary advantage without any public interest that is sufficient to attract the provision. The petitioner has to show that he never obtained any advantage by abusing position corruptly or by any illegal means.

Therefore, even if the arguments of the learned counsel is accepted the said factum of existence of any work or no work or whether accused is posed himself as a public servant to do some official favour to the complainant that has to be thrashed out by means of evidence before the Court. Therefore, I simply say that this is not a stage where the Court can rely upon the contents of the charge sheet meticulously and draw up a definite opinion that there was no existence of any work or the accused has not at all in a position to show any official favour to the complainant, that has to be established during the course of full dressed trial. Where the matter requires to be decided by means of some evidence and some doubt is created with regard to the complicity of the accused in the crime, then the Court normally should not discharge the accused and it should frame the charges and proceed with the case to provide opportunity to both the parties to prove their respective pleas. Therefore, second ground is also, in my opinion, not available to the petitioner, at this stage.

11. The last but not least contention taken up by the learned counsel for the petitioner as noted above is registering of the case by the Investigating Officer after doing some investigation.

12. It is very strongly contended before me by Sri R.S.Lagali, learned counsel, that the investigating officer has shown some extra interest in the case to see in future that accused is convicted in the case. Therefore, in this case before registering of the case the investigating officer has sent the micro tape recorder with the complainant to record the conversation between himself as well as the accused for

the purpose of registering the case and thereafter relying upon such materials he registered a case and proceeded with the investigation. This shows the unnecessary interest on the part of the investigating officer, which makes the entire proceedings illegal and being vitiated by serious incurable defects. Therefore, he has contended that on this sole ground, the petitioner has to succeed and he is entitled to be discharged.

13. Per contra, Sri S.S. Kumman, learned counsel for the respondent/Lokayukta submitted that in all the cases the same analogy cannot be applied. The investigating officer perhaps to confirm himself with regard to the veracity of the complaint might have sent the tape recorder along with the complainant, that itself cannot be called as an illegal act or any extra interest on the part of the investigating officer. Therefore, it cannot be a ground at this stage to discharge the accused even if any illegality or irregularity is committed by the investigating officer that has to be appreciated during the course of the full dressed trial by providing an opportunity to the investigating officer to explain why he did so. If really the investigating officer was interested and only with in intention to trap the accused persons or to implicate a innocent persons into the crime, with such intention if he has done, definitely the Trial Court can take into consideration of the same at the time of disposal of the case on merits. Therefore, he has contended that it is not a ground for discharge of the accused/petitioner on the charges.

14. In this context, the learned counsel for the petitioner relied upon a ruling of this Court reported in 2012 (3) KCCR 1738 in the case of Sri Ramesh Desai and Another Vs The State of Karnataka by Raichur Lokayukta P.S., wherein at paragraph 13, this Court has categorically pointed out similar facts and circumstances and held that

13. The material discloses that the complainant first approached Lokayukta Police on 5.10.2007 and he apprehends that the petitioners 1 and 2 may demand bribe for doing favour to cancel the deputation. The Lokayukta police in order to get concrete material for registering the case, gave tape recorder to the complainant to record the conversation with petitioners 1 and 2 to create a basis for registering the complaint. In the context of the above facts, a serious impropriety on the part

of the I.O. is evident, because I.O. does not register the complaint on 05.10.2007. In fact, the complaint categorically mentions that the complainant apprehend that Petitioners 1 and 2 may demand bribe. Therefore, the act of the I.O. is highly depreciable. The I.O. should act as impartial and independent investigating agency. When there is no material to register the complaint on 05.10.2007 the I.O. should have insisted better material for registering the complaint. He should not have associated himself and assisted the complainant by giving tape recorder to record the conversation. It may be true that every complaint need not be registered blindly. The I.O. is entitled to make preliminary enquiry. But however, giving tape recorder to record conversation with regard to demand of bribe does not constitute preliminary enquiry, rather it amounts to collecting the evidence against the petitioners even before the case is registered. This indicates undue interest shown by the I.O. in the investigation of the case. Therefore, it becomes doubtful to believe the credibility and integrity of the investigation and the final report. In view of the above serious illegalities, the investigation gets vitiated.

15. On meaningful reading and understanding of the said observations made by this Court, it is clearly held that in every complaint the investigating officer need not register the case, particularly the investigating officer is also entitled to make preliminary enquiry but what the Court has said that sending the tape recorder to record the conversation amounts to commencement of investigation. Therefore, without registering a case, the Investigating Officer should not have done that. Therefore, in view of the serious illegalities the investigation held to be vitiated. But what has to be observed in the above said case is that on that ground the Court has not quashed the proceedings. It is worth to note here the observation in the last paragraph of the decision of this Court, wherein it was observed that;

for the reasons stated, the investigation and the final report against the petitioner No. 2 vitiated the final report against the petitioner No. 1 does not sustain because there was no valid sanction to prosecute him. The sanction to prosecute him is rejected, in that view of the matter the petition is allowed and proceedings in Special C.C.No. 7/2011 were quashed.

16. Therefore, looking to the facts involved in the above case, it appears his lordship has not quashed the proceedings on the ground of the illegality in the charge sheet but on the ground that the sanction for prosecution was not granted. But consequently the illegality and irregularity committed by the investigation officer was also discussed. Therefore the above ruling is not strictly in a strait jacket manner applicable to the present case.

17. In this background, it is worth to note here, the subsequent rulings referred by Sri S.S. Kumman, learned counsel for the respondent, reported in 2013 AIR SCW 6386 between Lalita Kumari Vs Govt. of U.P. and Others, which is the latest one on this point, wherein at paragraph 111, the conclusive directions issued by the Supreme Court says that;

Conclusive / Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first information forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received but only to ascertain whether the information reveals any cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes / family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

Relying upon the above said decision the learned counsel contended that in corruption cases preliminary inquiry is allowed. Whereas Sri R.S. Lagali, learned counsel for the petitioner respectfully submits that investigating officer can make preliminary inquiry only in order to ascertain whether there is any cognizable offence is committed or not but he cannot make any preliminary inquiry if the complaint averment itself discloses cognizable offence there cannot be any preliminary inquiry even according to the above said ruling.

18. I have carefully gone through the submissions made by the learned counsels but the Court has to be practical in ascertaining the facts as to whether the Investigating Officer who has entrusted with such work discloses the cognizance of the offence or whether he requires some more facts to assert himself or whether facts are hazy or fully made out in the complaint or not in such confusion if he makes any preliminary inquiry in order to confirm himself that he has been proceeding with the investigation in spite of cognizable offence, such preliminary inquiry, in my opinion, cannot be called as a preliminary investigation by the

Investigating Officer. Though in the above said case this Court has held that sending of the micro tape recorder along with the complainant shows the interestedness of the Investigating Officer, which in my opinion has to be decided during the course of full dressed trial by providing opportunity to the Investigating Officer to explain whether he was really interested in conducting such an vitiated inquiry or whether unmindful by the consequences by ignorance of the factual or ignorance of any decision of the Court or ignorance of law, whether he has done such a mistake. Therefore, invariably in all the cases the said principle cannot be applied so as to come to the conclusion that the Investigating Officer has shown extra interest in the case with any ulterior motive. Even otherwise, considering that such an act is an illegal act vitiates the entire charge sheet, nevertheless, during the course of the investigation excluding the portion which is affected or tainted with illegality, if the remaining portion are credible and acceptable and sufficient to constitute an offence against the accused person and if the prosecution is able to show before the Court that other materials on record, which are sufficient to draw an inference that the investigation was impartial and no prejudice was caused to the accused, then the Court can take appropriate decision on such points. Therefore, I am of the considered opinion that in this particular case such bias or any interestedness on the part of the Investigating Officer has to be tested with other materials on record. It is also to be noted that under certain given circumstances we cant suspect same set of action or reaction from the witnesses; it all depends on the experience, understanding capacity, legal and practical knowledge of the Officers who are in the helm of affairs. Some Public Officers may act with some over enthusiasm, which cant be termed as interestedness in either of the parties to the case. Therefore, all these aspects require to be tested by providing opportunity to both parties when particularly the matter reached the stage of framing of charges or for evidence.

19. The accused has not approached the Court for quashing of such proceedings, immediately after registration of the case or before investigation is completed. He allowed the Investigating Officer to conclude the investigation and even after the Court taking cognizance, such order has not been challenged before this Court. Even without raising his little finger at the earlier stages before this Court, he asked for discharge, before the trial Court even not raising such points. As it is

evident that there are some materials in the complaint, that demand of Rs. 1, 300/- and acceptance of Rs. 700/- and demand for further amount of Rs. 500/- when the said allegations are sufficient to constitute an offence under the Provision of Prevention of Corruption Act, which is also supported by the statement of the co-accused during the course of trap, the accused does not deserve for discharge. The proof is something different from prima facie allegations made against the accused. When prima facie allegations are available against the accused, which are sufficient to create strong suspicion with regard to the commission of the offence that itself is sufficient to frame charges against the accused and proceed with the case.

20. It is worth to note here a decision of the Apex Court, wherein almost similar set of facts are involved. Investigating Officer without registering a case conducted the investigation and later sends the complaint for formal registration of the case. The Supreme Court has said that considering the entire surrounding circumstances of the case the Court has to consider whether it is only formal registration of the case, investigating officer has sent the FIR or it is a tainted investigation. In a case reported in AIR 1976 SC 449 in the case of Mahasingh Vs State (Delhi Administration), wherein the Apex Court has held that:

On a complaint made to the Inspector of Anti Corruption Department, he recorded the same and arranged the raid by noting each step taken thereafter in a regular manner. Indeed the Inspector himself examined the witnesses under Section 161 of Cr.P.C. and completed the investigation. What was done by the Inspector in order to detect the accused while taking the bribe came within the term investigation under Section 4(1) of the Code of Criminal Procedure, 1898. The fact that he had also later on forwarded the complaint for formal registration of the case at Police Station did not do away with the character of the investigation already commenced by the Inspector on recording the complainants statement disclosing a cognizable offence. Therefore, any statement made by the accused in answer to question put by the Inspector was inadmissible under Section 162 Cr.P.C. and neither the prosecution nor the accused could take advantage of these answers.

21. Therefore, in the above case, after doing some portion of the investigation, the Investigating Officer sent the FIR for registration. It is only a formal registration after part of the investigation is done that shows that even the act shown by the Investigating Officer conducting the investigation while accused taking the bribe was prior to the registration of the FIR. The Court has observed that it falls within the ambit of Section 4(1) of Cr.P.C., which amounts to investigation. Therefore, mere registration of a case subsequently invariably in all the cases will not totally vitiate the proceedings. Further it may vitiate the portion of the investigation but if the Court is of the opinion that excluding the vitiated portion if the other portion of the charge sheet is believable then the Court has to take proper steps on that particular aspect. In this view of the matter, I am of the opinion, in this particular case whether the investigation is vitiated and on that ground the entire charge sheet has to be thrown out or whether the accused is to be acquitted has to be evaluated and appreciated only after providing an opportunity to the prosecution and it cannot be snubbed at the initial stages.

22. In dealing with Corruption cases and also bearing in mind the impact of Corruption on the society which is spreading like a cancerous disease, the Court should be very careful and cautious in appreciating the materials on record before adverting to quash the proceedings or discharging the accused. The Court should be vigilant to ascertain as to whether the proceedings are so vitiated and that the irregularity or illegality had prejudiced the accused and had resulted in a miscarriage of justice. Merely because there was some illegality or irregularity in the investigation or that the investigating officer had some animus against the accused or that the investigation was being supervised by a person who was interested cannot by itself lead to an inference that the accused had necessarily been denied a fair trial. Before an accused can in such circumstances claim that he has been prejudiced he has to indicate precisely the manner in which a fair trial has been prejudiced or denied to him.

23. It should be borne in mind once the accused is charge sheeted and cognizance is taken by the court, any illegality attached to the investigation that would not be sufficient to vitiate the trial and that can be taken care of by the court, for the purpose of finding out whether the same had caused any prejudice to the

accused. That does not however mean that an illegality must be allowed to persist or perpetuated by allowing the investigation to go on at the hands of an officer who is not diligent and competent to conduct the same if it is brought to the notice of the court at the initial stages. That means to say, any illegality or incurable irregularity that stares the Court on its face at the initial stages, that cannot be ignored or permitted to continue just because the accused may be entitled to claim prejudice at the trial. But in the ordinary course, if any illegality has crept into the investigation, if at the initial stages it is brought to the notice of the Court that can be corrected if at all it can be corrected by ordering for reinvestigation in such circumstances only the Court can intervene and correct the said illegality or irregularity committed during the investigation. At that stage, if the illegality cannot be cured the proceedings can be quashed. In my opinion, the said intervention of the Court is imperative so long as the case has not culminated in the filing of a charge sheet against the accused persons and so long as the competent Court has not taken cognizance of the offence. An illegality based on the violation of any of the provisions of any Act cannot be brushed aside but an objection to the validity of the investigation, in my opinion, has to be taken in the case before the charge sheet is filed or cognizance is taken before the Court. When the matter has already reached the stage of framing of charges the Court should not normally quash such proceedings or discharge the accused on that ground. The illegality or irregularity or the interestedness and the incompetency of the investigation officer has to be ascertained only after providing opportunity to the prosecution. Therefore, in my opinion, when the charge sheet is already filed the Court has taken cognizance and at the time of framing of charges the Court cannot, in any manner ascertain or hold that the prejudice is caused to the accused, prejudice whether caused or not can only be ascertained after the conclusion of the trial. Therefore, in my opinion, at this stage the accused is not entitled to be discharged. Before parting with this point, I would like to make it clear that, a defect or illegality in investigation, has no direct bearing on the competence or the procedure relating to cognizance or the trial by the Court. No doubt a police report, which results from an investigation, is provided under section 190 of Cr.P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is only the foundation of the jurisdiction of the Court to take cognizance and

to try the case. Therefore once the case reached to the stage of framing of charges, technical defects, illegalities, irregularities, will not take away the jurisdiction of the Court, but they are to be tested during the trial in order to conclude any prejudice or injustice is caused to the accused.

24. Now let me have some more guidance from the decisions of the Apex Court as to under what circumstances the Court can discharge or refuse to discharge the accused. The Apex Court in a decision reported in (2014) 3 SCC 383 in the case of Bhaskar Lal Sharma and Another Vs Monica And Others, has held that

Core test that has to be applied under Section 482 of Cr.P.C. before summoning the accused is that the facts stated against accused have to be accepted as they appear on the very face of it Appreciation, even in a summary manner, of averments made in a complaint petition or FIR is not permissible at the stage of quashment of criminal proceeding.

If the charge sheet in its entirety taken into consideration and there are ample materials to proceed to frame charges merely on the ground of illegality or irregularity committed by the Investigating Officer, the said proceedings cannot be quashed.

25. In another ruling reported in 2013 (3) SCC 330 in the case of Rajiv Thapar And Others Vs Madan Lal Kapoor, the Supreme Court has further observed that

At the stage of considering the facts under Section 482 of Cr.P.C. neither truthfulness of allegations levelled by complainant can be evaluated, nor can weight of defence evidence to be determined Where allegations bring out all ingredients of charge(s) levelled, and material placed before Court prima facie shows truthfulness of allegations, on the basis of the allegations then trial must proceed even when accused is successful in raising some suspicion or doubt in allegations levelled.

(Emphasis supplied)

26. Last but not the least, in a recent ruling reported in 2012 (9) SCC 460 in the case of Amit Kapoor Vs Ramesh Chander And Another, where in the Apex Court

has observed that;

Under Section 227 and 228 of Cr.P.C. stage has not concerned with proof but merely strong suspicion that accused that accused has committed offence Final test of guilt is not to be applied at the stage of framing of charges.

It is also said at paragraph No. 27.13 that;

Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27. In the light of the above ruling let me come back to the facts of this particular case, as I have narrated that in the complaint itself there is an allegation of demand of Rs. 1,300/-, receipt of Rs. 700/-, further demand of Rs. 500/- and the trap has been laid. During the course of trap, it is alleged that on behalf of the petitioner one Nagesh has received the amount his explanation was also recorded and he has stated that he has received the money on the directions and instructions of this petitioner, in my opinion, the above facts are at this stage sufficient to create suspicion in the commission of the offence by the accused in order to frame charges against him.

28. Under the above said circumstances, I do not find any strong reasons to set aside the order passed by the Trial Court. Hence, the petition is devoid of merits and the same is liable to be dismissed.

29. Accordingly, the petition is dismissed.

30. Though some observations have been made by this Court while discussing with the above said points raised by the learned counsels, but they should not in any manner persuade the Trial Court at any stage during the trial for any purpose. The Trial Court has to apply its independent judicious mind on the basis of the materials on record and pass appropriate orders.

31. However, the Court records its appreciation to the suspicion rendered by Sri R.S. Lagali, learned counsel for the petitioner and Sri S.S. Kumman, learned counsel for the respondent.

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