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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION No. 176 OF 2010

UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE  
OF CRIMINAL PROCEDURE, 1973

PETITIONER:

Mohan Chand Baidh, s/o Kastur Chand  
Baidh aged about 43 years, r/o Shanti  
Vijay Market, Sadar Bazaar, Raipur (C.G.)

P.R. No. 1806/10  
Presented by Shri R. Verma  
Dated 06.04.10

VERSUS

RESPONDENT:

PROSECUTION

State of Chhattisgarh, through the Station  
House Officer, Police Station- G.R.P.  
Bilaspur, District Bilaspur (C.G.)

28/4/15

APR

**HIGH COURT OF CHHATTISGARH : BILASPUR**

**S.B.:HON'BLE SHRI JUSTICE MANINDRA MOHAN SHRIVASTAVA**

**Criminal Revision No.176 of 2010**

**Petitioner /Applicant**

Mohan Chand Baidh

**Versus**

**Respondent / Non-applicant**

State of Chhattisgarh

**JUDGMENT**

**POST ON 31<sup>st</sup> MARCH, 2015**

सत्यमेव जयते

Sd/-  
Manindra Mohan Shrivastava  
Judge

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**HIGH COURT OF CHHATTISGARH : BILASPUR**

**SB : HON'BLE SHRI MANINDRA MOHAN SHRIVASTAVA, J.**

**Criminal Revision No.176 of 2010**

**Petitioner / Applicant**

Mohan Chand Baidh

**Versus**

**Respondent / Non-applicant**

State of Chhattisgarh

**Present:**

Shri Pramod Verma, Senior Advocate with Shri Virendra Verma, counsel for the applicant.

Shri Ashish Shukla, Govt. Advocate for the State.

**J U D G M E N T**

(Delivered on 31<sup>st</sup> March, 2015)

1. This criminal revision is directed against order dated 23.2.2010 by which the trial Court has framed charges against the applicant along with co-accused Sunil Kumar Santwani and Rajesh Sethiya who have been charged of commission of offence under Sections 489-B, 489-C and 120-B of the IPC and Section 137 of the Railways Act.
2. Fake currency notes of Rs.10,87,900/- were found in possession of co-accused Sunil Santwani while travelling in the train on 10.10.1995. On a memorandum taken, he informed the police regarding involvement of other accused, taking clue therefrom, investigation was carried out by the police and charge sheet was filed in the Court against the applicant and other accused persons namely - Sunil Santwani, Rajesh Sethiya, Sunil Jain, Manoj Jain and Hemant. The prosecution story is that applicant and other accused, acting in close concert and conspiracy, are involved in distribution of

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fake currency notes. Though the offence was registered in the year 1995, charges were framed by the trial Court on 23.2.2010 against all the accused including the applicant. It is this order which is under challenge in the revision before this Court.

3. Learned senior counsel appearing for the applicant argued that no prima facie case for framing charges against the applicant is made out. He contends that even at the stage of framing of charge, some prima facie material of admissible nature is required to be placed in the charge sheet before the Court, before a person could be subjected to agony of criminal trial. According to him, involvement of applicant is only on certain suspicion which is not supported by any material constituting admissible evidence, which, if proved by the prosecution during trial, may lead to conviction of the applicant on the allegation of conspiracy of commission of offence under Section 489-B, 489-C and Section 137 of the Railways Act. Further contention of learned senior counsel is that the statements/confessions of the other accused persons are not admissible even against the maker of such confession, much less an admissible evidence of applicant being one of the conspirators of commission of alleged offence. The case diary statements of prosecution witnesses do not even prima facie indicate involvement of the applicant with other accused, particularly Sunil Santwani and Rajesh Sethiya. No incriminating article has been seized from the possession of the applicant.

4. Per contra, learned counsel for the State submitted that at the stage of framing of charges, all that is required to be seen is whether there is sufficient ground for proceedings based on strong suspicion and material indicating involvement. He submits that present is a case of conspiracy hatched by all the accused persons towards commission of offence of distribution of fake currency notes in huge quantity. The co-accused Sunil Kumar Santwani was caught red-handed with huge quantity of fake currency notes and when his memorandum was taken, he disclosed the racket involved in distribution of currency

notes which also involved the name of the applicant. Ramesh Bhai, one of the prosecution witnesses, in his case diary statement under Section 161 Cr.P.C., has stated that the applicant along with co-accused Rajesh Sethiya had come to meet other accused Manoj Jain and Sunil Jain on two -three occasions . The wife of the applicant pledged her property towards grant of loan in favour of co-accused Rajesh Sethiya which shows that applicant and Rajesh Sethiya are close associates. Train Ticket Examiner and other prosecution witnesses have stated regarding presence of Rajesh Sethiya along with Sunil Santwani who was arrested with fake currency notes. The prosecution witnesses, as and when they are examined by the Court, may also identify Sunil and Rajesh Sethiya who were seen in the train and later on, Sunil was arrested with fake currency notes and Rajesh Sethiya is alleged to have run away from the spot. It is also submitted that from the possession of Sunil Kumar Santwani, number of papers, documents have been seized which also includes papers containing names and details of present applicant Mohan Chand Baidh. All these materials taken together raise a very strong suspicion of the applicant being involved in the offence of conspiracy of commission of offence of distributing fake currency notes. In support of his submissions, learned counsel for the State relied upon **State of Orissa Vs. Debendra Nath Padhi** (2005) 1 SCC 568, **Indu Jain Vs. State of Madhya Pradesh and Ors** (2008) 15 SCC 341, **Central Bureau of Investigation Vs. Mukesh Pravinchandra Shroff and Ors.** (2009) 16 SCC 429 and **Baldev Singh Vs. State of Punjab** (2009) 3 SCC (Cri.) 66.

5. The prosecution case, as unfolded from the charge sheet, which resulted in framing of charge against the applicant under Section 120-B of the IPC, is that on 10.10.2005, co-accused Sunil Santwani was searched by police team on the information regarding he carrying fake currency notes. The police team caught red-handed Sunil Santwani and it is alleged that from his possession, fake currency notes of Rs.10,87,000/- were recovered. Further case of the

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prosecution is that along with this accused Sunil Kumar Santwani, co accused Rajesh Sethiya was also travelling in the same coach but he escaped from the spot and could not be apprehended. Rajesh Sethiya was later on arrested by the police. During investigation, according to prosecution, a racket was found operating which was engaged in distribution and sale of fake currency notes. Allegation is that the applicant and other co-accused hatched conspiracy to commit the offence of sale and distribution of fake currency notes which were collected by applicant- Manoj Chand Baidh and Rajesh Sethiya from co-accused Sunil Jain and Manoj Jain at Ahmedabad and when it was being carried by co-accused Rajesh Sethiya and Sunil Santwani to Calcutta, these currency notes were seized in transit, from the possession of the co-accused.

6. The prosecution alleges that present applicant- Mohan Chand Baidh is close associate of Rajesh Sethiya. Proposed prosecution witness Ramesh Bhai, son of Suresh Bhai Jain, has stated in his diary statement that Sunil Jain and Manoj Jain are traders in gold and silver ornaments. Shop of Manoj Jain and Sunil Jain is situated near the shop of one Lalji Bhai. He has stated that the applicant- Mohan Chand Baidh and Rajesh Sethiya had come to the shop of Sunil Jain and Manoj Jain. He had seen appellant-Manoj Chand Baidh in conversation with Sunil Jain & Manoj Jain. He has also stated that he very well knows Rajesh Sethiya and applicant-Mohan Chand Baidh as he had seen these two persons in the shop of Sunil and Manoj, two -three times and they also visited the shop of Lalji Bhai. The incident, wherein Sunil Santwani was caught red handed in the train carrying fake currency notes, happened few days after this witness had seen Rajesh and the applicant having come together in the shop of Sunil Jain and Manoj Jain. Sunil Jain and Manoj Jain are also co-accused of the present case and the allegation against these accused is that they are involved in the sale and distribution of fake currency notes and the fake currency notes which were found in the possession of co-accused Sunil Santwani were those which were

brought by Rajesh and applicant-Manoj Chand Jain from Sunil Jain and Manoj Jain.

7. The prosecution has brought on record of the charge sheet, communication dated 11.12.1995 of the State Bank of India, in which it has been disclosed that for grant of loan of Rs.25 lakh to one Mahakaushal Engineers and Contractors Private Ltd., Smt. Leela Baidh, wife of Suresh Baidh and Nirmala Baidh, wife of present applicant-Mohan Chand Baidh, had pledged their property, factory land and building as equitable mortgage. Rajesh Sethia and Paras Baidh are Director of this Mahakaushal Engineers and Contractors Pvt. Ltd.
8. Even if it is accepted at this stage that confession by Rajesh Sethiya and others involving present applicant as one of the conspirator in all their dealings relating to procurement, sale and distribution of fake currency notes is inadmissible in evidence, the materials with which the prosecution has come out, prima facie discloses close association of the applicant with co-accused Rajesh Sethiya. The case of the prosecution is that Rajesh Sethiya was the person who was travelling in the train along with Manoj Santwani and just before search made out by the police team, Rajesh Sethiya escaped from the scene and he was arrested and later on, number of prosecution witnesses have stated that there were two persons travelling together. From the possession of Sunil Santwani, number of documents were seized.
9. It has to be noted that applicant and other accused are alleged to have hatched conspiracy. As, ordinarily, direct evidence of conspiracy is not available, the Court is required to draw reasonable inference of hatching conspiracy based on established facts and circumstances which are compatible with the hypothesis of guilt of the accused. The applicant is stated to be close associate of Rajesh Sethiya and he was seen moving with him and having met other co-accused. These two accused, it is alleged, passed on currency notes to the applicant and

Rajesh Sethiya. Therefore, there is strong suspicion of involvement of the applicant also in the alleged commission of offence.

10. In the case of **Sajjan Kumar Vs. Central Bureau of Investigation**<sup>1</sup>, the Supreme Court, after referring to its earlier decision in the case of *Union of India Vs. Prafulla Kumar Samal* (1999) 3 SCC 4 and *Dilawar Balu Kurane Vs. State of Maharashtra* (2002) 2 SCC 135, observed 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. The principles applicable in such cases were carved out in para-21 of its judgment, as below-

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the

<sup>1</sup> (2010) 9 SCC 368



broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the 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.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but 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.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to

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see whether the trial will end in conviction or acquittal."

11. Applying the aforesaid well settled principles and that present is a case whether the applicant along with other co-accused is involved on the allegation of hatching conspiracy to commit the offence, no fault can be found with the order passed by the Court below in framing charges against the applicant.
12. Yet another grievance was raised that though the criminal case was registered in the year 1995, the charges have been framed after 15 years and the criminal case has not been concluded till date even after lapse of 5 years. To that extent, the grievance of the applicant appears to be quite reasonable. The applicant is entitled to expeditious trial of the case. In this case, it is evident, the offence was registered in the year 1995, charges were framed after 15 years in the year 2010 and by now, more than 5 years has elapsed and the trial is not yet concluded.
13. In the result, though I am not inclined to interfere with the order framing charges against the applicant, at the same time, the trial Court is directed to expedite the trial and conclude the same as early as possible, preferably within a period of 6 months from the date of receipt of copy of this order.
14. It is made clear that the trial Court shall not grant unnecessary adjournment to any of the parties and all attempts should be made to ensure presence of the prosecution witnesses, if necessary, by issuing coercive process for their appearance.
15. With the aforesaid observations, the revision petition is dismissed.

Sd/-  
Manindra Mohan Shrivastava  
Judge