

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1145 of 2016ORDER RESERVED ON 18.10.2016ORDER DELIVERED ON 24.10.2016

- Virendra Pratap Singh S/o Mr. Vishwanath Singh Aged About 41 Years R/o Block No. 1, Room No. 10, A C C Colony, Jamul, District Durg, Chhattisgarh. --- **Petitioner**

Versus

- State of Chhattisgarh Through Police Station Jamul, District Durg, Chhattisgarh. --- **Respondent**

For the applicant : Mr. Kishore Shrivastava, Sr. Adv.,
with Mr. Ashish Shrivastava, Mr. Prem
Fransis, Brijesh Mishra, Mr. Sudeep
Bhargav and Mr. Soumya Rai, Advocates.

For the Respondent : Mr. Anupam Dubey, Dy.Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. ORDER

1. The challenge in this petition is to the order dated 07.07.2016 passed by the Additional Sessions Judge, Durg in Sessions Trial No.33 of 2016 whereby the application filed u/s 227 of the Code of Criminal Procedure to discharge the petitioner was rejected. Consequently the charges were framed against the petitioner under Sections 307, 323 read with section 506 Part-II of IPC. The impugned order is filed as Annexure P-1 and the charges so framed is filed as Annexure P-2.
2. As per the prosecution case on 26.09.2015 a written report was made by one Suraj Singh against one Sunil Gupta and petitioner Virendra Pratap Gupta. It was stated that on 26.09.2015 at about 9.30 a.m., he along-with his other co-

workers of contract labourers were on strike at ACC plant. When they were on strike, Sunil Gupta with others came there and initially abused and told them that they are illiterate and since the bank was closed as such no payment could be made and asked them to leave the premises. However, the complainant and other workers continued with their strike. At that time, they were abused and assaulted by the present petitioner. Subsequently, Sunil Gupta, the General Manager of the ACC asked the petitioner who was his gun-man to shoot at them by pistol upon which the petitioner fired a gun shot from pistol which caused bullet injury to one Ashok Singh who sustained injury on his right hand finger. The other workers who were on strike were also assaulted by *Lathi*. On report being made, a crime was registered bearing No.451 of 2015 by the Police Station Jamul for the offences punishable u/ss 307, 294, 506-B, 323 read-with Section 34 IPC. Subsequently after investigation, charge sheet was filed against Virendra Pratap Singh, the petitioner herein. During the course of trial, an application was filed by the petitioner u/s 227 of Cr.P.C., to discharge the petitioner from the charges which was dismissed by the impugned order and the charges were framed.

3. (i) Learned counsel for the petitioner Shri Kishore Shrivastava, Sr. Advocate, referring to the nature of injury placed reliance in case of *Thaman Kumar Vs. State of Union Territory of Chandigarh (2003) 6 SCC 380* and would submit that when there is a conflict between oral testimony and medical evidence and there are varied dimensions and shapes and in case the nature of injuries do

not tally to the size and dimension of the weapon and when the injuries found on the victim were not supported by the kind of weapon used, then it can be inferred that the oral evidence regarding assault by use of particular weapon is not truthful. It is submitted that the injury is to be considered in the light of allegation and use of weapon. Referring to the injury, it is further submitted that the injury report would show that the injury is simple in nature which was caused by hard and blunt object. He further referred to the query report and stressed upon the query reports dated 07.10.2015 & 13.10.2015 and would submit that both the doctors have opined that the injury sustained by the victim cannot be caused by the bullet.

(ii) Referring to a case law reported in *(2008) 16 SCC 99 Kapildeo Mandal and others Vs. State of Bihar* the counsel would further submit that when there is variance between the medical evidence and ocular evidence and when the evidence given by the eyewitness is totally inconsistent to the evidence of the medical expert, then the entire evidence is to be appreciated in different perspective by the Courts. Further referring to the document of seizure, it is contended that though the seizure of Pistol was made but empty cartridges were not seized from the spot and it is not the case of the prosecution that the police tried to seize the cartridges and not found but the cartridges were not searched for. So the prosecution was sanguine of the fact that bullet was not fired at all. Further referring to FSL report, it is contended that the pistol sent for examination cannot be said that the bullet shot was made from the pistol or not and

the prosecution is completely silent as to why the pistol was not sent for FSL if the prosecution was sure about the bullet shot was made by pistol.

(iii) Referring to the statement of Ashok Singh, it is further submitted that Ashok Singh has given two different statements as in the initial dying declaration and the statement given u/s 161 Cr.P.C allegations have been attributed to this petitioner. Further referring to the transcription of CCTV footage it is submitted that the minute to minute CCTV coverage would show that no such attack was ever happened and in fact the complainants were aggressors which would be evident from the statement of Vijay Chauhan wherein the incident of firing gun shot is completely disowned rather it is stated that the complainants were aggressors and attacked and in order to counter their conduct, false report has been made. Further placing reliance in *Parsuram Pandey and others Vs. State of Bihar (2004) 13 SCC 189* it is submitted that in order to constitute an offence u/s 307, two ingredients must be present i.e., intention or knowledge relating to commission of murder and doing the act towards it.

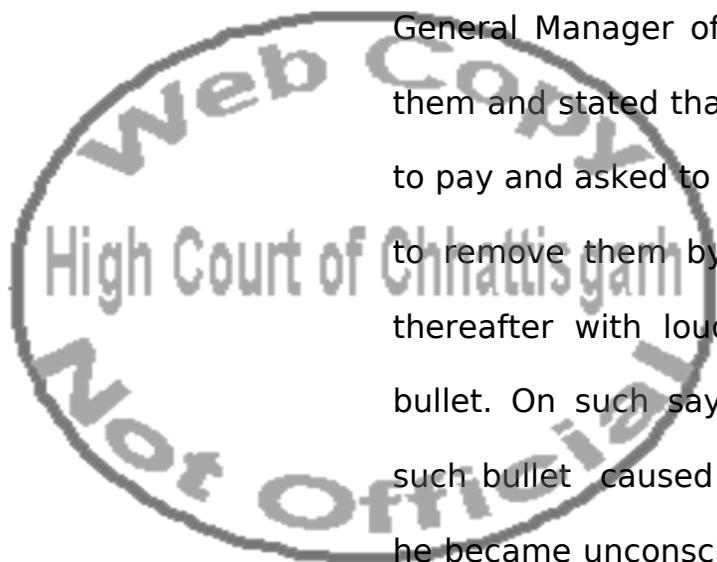
(iv) Referring to the statement of witnesses, it is submitted that no intention can be gathered for an offence u/s 307 of IPC, therefore, the charges u/s 307 in any case cannot be made out. Further referring to the statement of Vijay Chauhan it was strenuously argued that according to their statements, the complainants were aggressors and the mutual conflict is developed in between the statements of witnesses that who was the aggressor and who had

exercised the right of private defence then in such case it would be a case of sudden fight, therefore, necessarily it would take out the case from the ambit of section 307 of IPC. The counsel further submits that under the circumstances the charges framed by the court below are completely illegal and liable to be set aside.

4. Per contra, learned State Counsel opposes the arguments.
5. Perused the charge sheet, documents which are filed along-with this petition. The FIR was lodged by one Suraj Singh which purports that while they were sitting on strike in protest against non-payment of salary, at that time, the General Manager of ACC came with 3 persons and abused them and stated that since the Bank was closed he is unable to pay and asked to disperse the crowd otherwise threatened to remove them by cutting and throwing away them and thereafter with loud voice asked the gunmen to fire the bullet. On such say, the petitioner fired a bullet shot and such bullet caused injury on the hand of Ashok Singh then he became unconscious. Thereafter, the altercations started.

The case diary also contains the dying declaration of Ashok Singh which was recorded on 26.09.2015 at about 4 p.m. The dying declaration would show that the injured had deposed that when altercations took place at the time of strike, the guard had fired bullet and the bullet pierced into his hand thereby he sustained injury on his hand. Therefore, in dying declaration direct allegations are attributed to this petitioner.

6. The Statement of injured Ashok Singh u/s 161 of Cr.P.C. would show that at the time when the victim and other co-workers were sitting on strike at that time the General



Manager Sunil Gupta came along-with the Guard the present petitioner and told them that since today the Bank is closed, they will not be able to make the payment and after the bank is opened, they will make the payment and thereafter asked them to go away. When they did not disperse, the said person asked the gunman to fire and by the bullet shot, the injury was caused on his hand. The submission made by the petitioner that such statement is completely improbable that the person cannot see the bullet coming towards him and avoided so it brushed the fingers, cannot be appreciated at this stage. The said statement may be an expression of fact, which cannot be interpreted by picking up the word to interpret in favour of petitioner. So far as injuries are concerned, admittedly, the bullet fire had not hit any person directly but it brushed. In the light of such fact when the FIR is further considered along-with the dying declaration, at this stage, the intention or knowledge relating to commission of murder along-with the doing of act towards it cannot be sidelined in view of the statement of victim.

7. Prima facie, taking into the statement, at this stage it would go to show that the injured and other co-workers when landed into altercation with the petitioner and the General Manager, they were initially asked to go away and the workers having not disbursed, the gunman fired the bullet. The dying declaration is also clear on this subject, therefore, at this stage only because proper grievous injury has not been caused, it cannot be taken to be a decisive factor to form an opinion that there was no intention to kill or the bullet was not fired.

8. As has been held in *(2008) 16 SCC 99 (supra)* that while appreciating variance between the medical evidence and ocular evidence, oral evidence of eye witness has to get primacy as the medical evidence is basically opinionative. In this case the injured an eye witness in dying declaration as also in a statement u/s 161 of Cr.P.C., has made a positive allegations, therefore, it would have the preference over the medical evidence. The inconsistencies in the evidence given by the eyewitnesses do not primarily exist now and in any case the evidence can only be appreciated after the witnesses are examined.
9. At this stage, the statement of the victim would have the primacy over the manner of attack and firing of bullet by gun shot, therefore, unless and until the witnesses are examined, the opinion cannot be formed that the medical evidence has conclusively proved that no occurrence had taken place.
10. Further more, the transcript of CCTV filed alongwith challan would show that till the time 9.27.23 a.m., the CCTV footage has been transcribed and the incident happened at 9.30 a.m. After 9.27, the CCTV footage of 9.40.53 appears. Therefore in between 13 minutes no transcription of CCTV footage is given. The CCTV footage is shown to have been seized on 05.10.2013. Therefore, the argument at this stage that CCTV footage also do not show any happening is difficult to accept as the circumstances hold the sway against the petitioner inasmuch as the CCTV was well within the control of the petitioner till 5.10.2013 from the date of incident.
11. In case of *Amit Kapoor Vs. Ramesh Chander and another 2012 9 SCC 460* it has been laid down that at the

initial stage of framing of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. It is further held that all that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not and the final test of guilt is not to be applied at that stage. The extract of principles laid down in paras 27 & 30 are reproduced hereunder:

“27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd, and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482 Cr.P.C., the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no



offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. 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.

27.14. Where the charge sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.16. Where the factual foundation for an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requires of the offence. “

“30. We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in *State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659* referred to the meaning of the word “presume” while relying upon Black's Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial



concludes with the court forming its final opinion and delivering its judgment.”

12. Therefore applying the aforesaid principles to the present case in the light of the evidence and facts on record, I am of the opinion that no illegality has been committed by the Court below in rejecting the application filed by the petitioner seeking his discharge. Accordingly, this petition is liable to be and is hereby dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**



Cr.M.P. No. 1145 of 2016

(Virendra Pratap Singh Vs. State of Chhattisgarh)

HEAD-NOTE

Statutory presumption is always in framing of charge until
demonstrated otherwise

