
(2015) 01 OHC CK 0030
In the Orissa High Court
Case No : C.R.L.M.C. No. 2920 of 2010

Shiv Dutt Sharma

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 227, 228, 239
Penal Code, 1860 (IPC) — Section 415, 420, 467, 468

Citation : (2015) 01 OHC CK 0030

Hon'ble Judges : S.C. Parija, J.

Bench : Single Bench

Advocate : S.K. Padhi, Senior Advocate, B.K. Sharma, K. Mohapatra and B. Patnaik, for the Appellant

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This application has been filed under Section 482 Cr.P.C., challenging the order dated 23.8.2010, passed by the learned J.M.F.C., Barbil, in G.R. Case No. 27 of 2007, rejecting the application of the accused-petitioner under Section 239 Cr.P.C. for discharge and framing charge against him under Section 420 I.P.C.

2. The brief facts of the case is that on 01.11.1979, the Government of Orissa executed a mining lease in favour of M/s. Utkal Minerals for mining of Iron Ore and Manganese Ore over an area measuring 26.243 hectares at village Raika, in Keonjhar district, in the State of Orissa. On 25.06.1985 a Deed of Transfer of mining lease was executed by the State of Orissa in favour of the petitioner to carry on mining activities to extract Iron Ore and Manganese Ore in the aforesaid 26.243 hectares i.e. 64.85 acres of land. Subsequently, a Deed of Rectification of mining lease was executed whereby the schedule of land was modified but the total area of the lease remained same i.e. 64.85 acres. Thereafter, out of the total area of 64.85 acres of land, the petitioner was accorded surface right by the Collector, Keonjhar, for an area of 36.13 acres and accordingly possession was

given to the petitioner on 12.9.1986. The petitioner was carrying on mining activities and extracting Iron Ore and Manganese Ore from the said land measuring 36.13 acres.

While the matter stood thus, M/s. Orissa Mining Corporation Ltd., (hereinafter referred to as "OMC") made a complaint to the Collector, Keonjhar, alleging that the petitioner is conducting mining operation violating the boundary line between the leasehold area of OMC and that of the petitioner. On the basis of such allegations, the Collector, Keonjhar, directed for a joint verification to determine the exact boundary line between leasehold mining area of the OMC and that of the petitioner. Accordingly, a joint verification was conducted on 29.6.1991 by the Mining Officer, Joda, Mining Officer, Keonjhar and Sub-Collector, Champua, in the presence of the representatives of the petitioner and OMC. During the joint verification, field measurement was conducted and in the joint verification report it was observed as follows:--

"Since there is dispute on the common boundary from station No. 100 to 103 of OMC which forms common with "BA" line of Sri Sharma's lease, the operation of the quarries should be forthwith stopped within 300" on either side of the existing boundary of OMC from station No. 100 to 103 until re-survey is conducted and final decision is arrived at. Any violation of this will be treated as contravention of the lease covenants". Accordingly, both the petitioner and OMC were directed to stop mining activities within 300 ft. on either side of mining lease boundary from station No. 100 to 103, until re-survey is done and final decision is taken in the matter. The petitioner applied for renewals of the mining lease on 28.10.1998, since the mining lease was going to expire on 30.10.1999. However, as per Rule 24A(6) of the Mineral Concession Rules, 1960, the mining lease of the petitioner was deemed to have been extended by a further period, till the Government passes an order on such renewal application. Thereafter, on 22.03.2003, the Collector, Keonjhar, granted surface right to the petitioner only over the non-forest land measuring about 3.33 acres instead of 36.13 acres, since in view of the Forest Act, the petitioner cannot extract minerals in forest areas. On 26.3.2003, the Deputy Director of Mines, Joda, handed over possession of the said area of land to the petitioner for undertaking mining operation.

Subsequently, on 7.3.2006, the petitioner entered into an agreement with the opposite party No. 2 Company for sale of Iron Ore and Manganese Ore extracted from his leasehold mining area measuring 64.85 acres or 26.243 hectares. In the recital of the said agreement, it was stated that the buyer (opposite party No. 2) has agreed to pay an advance of Rs. 4.50 crores and has paid an amount of Rs. 4 crores by bank draft dated 4.3.2006, with the condition to pay the rest amount of Rs. 50,00,000/- within December, 2006. In the agreement, it was further provided that all the advance amount was to be adjusted @ Rs. 50/- on purchase of every metric ton of Iron Ore and Manganese Ore from the petitioner. Relevant clauses of the agreement are extracted below:--

"WHEREAS SDS has represented that they are the lessee of the leasehold area and are enjoying the peaceful and exclusive possession and control over the leasehold area, having right, title and interest which is free from any encumbrances i.e. mortgages, attachments, court injunctions, gifts, wills, exchanges etc. Further SDS declares that the mining lease of leasehold area is legally valid and subsisting and SDS has duly complied with all rules and regulations as prescribed.

AND WHEREAS SDS has approached the buyer with the proposal to exclusively sell the entire iron and manganese ore excavated by its raising contractor on his behalf from the leasehold area as delineated and marked in the plan annexed hereto.

AND WHEREAS relying upon the said promises, representations and assurances of SDS and believing the same to be correct, buyer has agreed to purchase exclusively the entire excavated Iron and Manganese Ore from the leasehold area of SDS, on the terms and conditions mutually agreed and contained herein."

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"1. SDS having absolute authority and every right over the leasehold area and being fully possessed of the Iron and Manganese ore produced from the "leasehold area" shall sell the entire quantity of the Iron and Manganese ore produced from the "leasehold area".

2. SDS shall deliver the Iron and Manganese ore to the Buyer at the mine stack and/or at the Mine head plant. In consideration thereof, the Buyer shall pay to SDS a sum of Rs. 500/- PER TON only, for Iron ore and manganese ore. These rates are exclusive of all royalties, taxes and duties.

3. The Buyer agrees to buy the excavated quantities of iron and manganese ore from the date of execution of this Agreement.

4. The Buyer has agreed to pay an advance of Rs. 450 Lakhs.

The buyer has paid Rupees 400 lakhs (Rs. Four hundred lacs only) vide bank Draft No. 171551 dt. 04.03.2006 drawn on ICICI Bank Limited payable at Kolkatta favoring SDS which will be adjusted against the supply of Iron ore and Manganese at the rate of Rupees 50/per ton of Iron ore and manganese till the same is fully repaid. In case buyer is not able to purchase iron ore and manganese as per his requirements then the balance amount of advance is liable to be forfeited by SDS.

The buyer has agreed to pay balance Rs. 50 lakhs within Dec. 2006."

The agreement had an arbitration clause, which reads as under:--

"13. If at any time any dispute or question arises between the parties touching the meaning, construction or effect of this agreement or of any clause or thing herein contained or regarding the respective liabilities and rights under this

agreement then every such dispute or question except where specifically provided shall be referred to arbitration, as per the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time, to, two arbitrators, one each to be appointed by each party hereto, within one month from the date of notice invoking this arbitration clause is issued to the opposite party and the arbitrators, shall enter upon reference within one month from the date of their respective appointment and the arbitrators/umpire shall give a speaking award. The place of arbitration or sitting shall be at Bhubaneswar. For any dispute, the Courts in Bhubaneswar will have sole jurisdiction." On 18.8.2006, OMC again lodged a complaint against the illegal mining activities of the petitioner in the disputed area, pursuant to which, the Deputy Director of Mines, Joda, Keonjhar, vide his letter dated 26.8.2006, intimated the petitioner to discontinue mining operation in the disputed area till completion of detail checking of lease boundary of both the mining leases. Accordingly, the petitioner vide his letter dated 02.9.2006, intimated the raising contractor, M/s. B.K. Coalfields (P) Ltd. to stop all mining activity in the disputed area.

On coming to know about the stoppage of mining activity in the concerned leasehold area due to pre-existing boundary dispute with OMC, opposite party No. 2 Company addressed a letter to the petitioner dated 20.12.2006, pointing out to him that on misrepresentation and suppression of material facts, they have been induced to advance a sum of Rs. 4 crores for purchase of Iron Ore and Manganese Ore extracted from the leasehold mining area of the petitioner, over which he had claimed complete ownership and control.

On 21.1.2007, the opposite party No. 2 Company lodged a written report before the I.I.C., Barbil Police Station, which was registered as Barbil P.S. Case No. 11 of 2007, under Sections 420/467/468 I.P.C., alleging therein that inspite of the existing boundary dispute with OMC, the petitioner falsely represented to have right, title and interest and peaceful possession and control over the leasehold mining area measuring 64.85 acres or 26.243 hectares and by such representation, the petitioner had dishonestly and fraudulently induced the informant Company to pay an amount of Rs. 4 crores as advance to the petitioner, for purchase of Iron Ore and Manganese Ore from the said leasehold mining area.

3. On completion of investigation, the police submitted charge-sheet against the accused-petitioner under Section 420 I.P.C., cognizance of which was taken by the learned Magistrate.

4. Being aggrieved by the order of cognizance, the accused-petitioner filed an application under Section 482 Cr.P.C., vide CRLMC No. 2773 of 2007, which was disposed of by this Court, vide order dated 05.02.2010, with the following findings:--

"Applying the above principle to the case in hand this Court comes to the conclusion that the fact of joint verification held on 29.06.1991 was not brought

to the notice of the complainant. The fact that in that joint verification the petitioner was debarred from raising Iron Ore and manganese Ore from 300 feet either side of station No. 100 to 103 of that lease hold area was also not brought to the notice of the complainant. Thus, the representation that the petitioner was in possession of the whole of 26.243 hectares of land was not correct. In fact a portion of the leasehold area was taken out of his zone of operation. If the complainant were made aware of such a situation, the complainant might not have agreed for advance of Rs. 4,00,00,000/- (Rupees four crores). Therefore, this Court comes to the conclusion that while taking cognizance of the offence, the learned Magistrate has not committed any illegality or irregularity. The fact presented before him reveals a prima facie case under Section 420 I.P.C. for taking cognizance and issuance of process. Hence, this Court is not inclined to interfere with the cognizance taken by the learned Magistrate on 22.07.2007 in G.R. case No. 27 of 2007." 5. However, this Court observed that the observation made in the said order dated 05.02.2010, refusing to interfere with the order of cognizance shall not stand in the way of the trial Court for considering the materials, either at the time of the framing of charge or at the time of final disposal of the case.

6. The accused-petitioner filed an application before the learned trial Court under Section 239 Cr.P.C. for discharge, which was rejected vide order dated 23.08.2010, holding that there are sufficient materials available on record to presume that the petitioner has committed the offence under Section 420 I.P.C. Accordingly, learned trial Court proceeded to frame charge against the accused-petitioner under Section 420 I.P.C., which is the subject matter of challenge in the present application.

7. Learned counsel for the accused-petitioner submitted that as there was no dishonest intention to deceive the informant Company either at the time of signing of the agreement with them on 07.03.2006 or at any point of time subsequent thereto and all necessary documents pertaining to the mining lease having been enclosed to the agreement, no offence under Section 420 I.P.C. is made out. It was submitted that prior to the execution of the agreement, the representatives of the informant Company visited the leasehold area and physically inspected the mines and having understood the working and requirement of the said mines, intimated the petitioner that the Company is willing to take the mines on "as is where is basis". It was further submitted that as the boundary dispute with the OMC was only in respect of a small area of 300 ft. from either side of the boundary line, out of the total area of 36.13 acres, for which surface right was granted in the year 1986, there was no misrepresentation or suppression of material facts by the petitioner. It is further submitted that the petitioner was granted surface right over 3.33 acres of land in the non-forest area, in the year 2003, on which mining activity was being carried on without any hindrance. It was submitted that though Iron Ore and Manganese Ore were being extracted from the said area, the informant Company did not take delivery of the same and have lodged the impugned F.I.R., only to avoid

their liability under the agreement.

8. It was further submitted that the dispute raised by the informant Company relates to breach of contract, which is essentially civil in nature and in view of the arbitration clause in the agreement, the matter has been referred to arbitration, which is pending before the learned Arbitrator for adjudication. Therefore, the present criminal proceeding for the self-same dispute and/or cause of action is not maintainable.

9. It was accordingly submitted that as the materials on record do not constitute the offence of "cheating", as defined in Section 415 I.P.C., the impugned order of the learned trial Court in rejecting the application of the petitioner under Section 239 Cr.P.C. for discharge and the subsequent order framing charge under Section 420 I.P.C. cannot be sustained in law.

10. Learned counsel appearing for the informant Company (opposite party No. 2) submitted that on the date of execution of the agreement between the accused-petitioner and the informant Company on 07.03.2006, the petitioner had the knowledge of there being boundary dispute between him and OMC over the leasehold mining area in question. However, the accused-petitioner intentionally did not disclose the same to the informant at the time of entering into agreement. On the representation of the accused-petitioner that the leasehold mining area having Iron Ore and Manganese Ore deposits was absolutely and fully in his possession and free from any encumbrances, dispute or litigation, the informant Company made an advance of Rs. 4 crores to the accused-petitioner for purchase of the said minerals from the leasehold mining area. It was submitted that on the basis of such false and fraudulent representation, the informant Company has been induced to pay a huge amount of Rs. 4 crores as advance, by concealing the fact that there was boundary dispute between the accused-petitioner and the OMC since 1991 and the accused had been directed by the mining authorities to stop all mining activities in the disputed area. It was accordingly submitted that there being sufficient materials on record to prima facie establish the offence of cheating, learned Magistrate was fully justified in rejecting the application of the accused-petitioner under Section 239 Cr.P.C. for discharge and framing charge against him under Section 420 I.P.C.

11. Learned counsel for the State with reference to the counter affidavit filed by the Deputy Director of Mines, Joda, submitted that the petitioner had a boundary dispute with OMC since 1990 and on their complaint, a joint verification of the common lease boundary was conducted on 29.06.1991 by the Mining Officer, Joda, Mining Officer, Keonjhar and Sub-Collector, Champua, along with representative of OMC and the petitioner. Both the lessees were directed not to carry out mining activities within 300 ft. on either side of the mining lease boundary from station No. 100 to 103, until final decision. It was further submitted that the Deputy Director Mines, Joda, vide letter dated 17.03.1998, instructed the petitioner to stop all mining activities within the disputed area. It was further submitted that on 09.04.1998, the Deputy Director of Mines

intimated the OMC and the petitioner for survey and demarcation of the disputed common boundary line of the lease. The survey and demarcation work was finally conducted on 17.06.1998, in which, the petitioner did not co-operate and therefore the demarcation dispute could not be settled.

12. Learned counsel for the State further submitted with reference to the said counter affidavit that the Deputy Director of Mines, Joda, vide letter dated 26.8.2006 again directed the petitioner not to continue with the mining operation in the disputed leasehold area till final demarcation and determination of the mining lease boundary line. It was further submitted the Deputy Director of Mines intimated the petitioner and the OMC vide letter dated 15.01.2009 to attend the survey and demarcation of the disputed area, which is to be carried out from 22.01.2009. The petitioner vide letter dated 21.01.2009 requested to defer the survey and demarcation of the disputed area and accordingly the survey for demarcation of the dispute area was rescheduled to 06.02.2009, but the petitioner failed to attend the survey and demarcation work on the scheduled date. It was further submitted that the mining operation of the accused-petitioner in respect of the leasehold mining area over 26.243 hectares has been suspended since 06.11.2009 due to want of statutory clearances.

13. On a perusal of the impugned order, it is seen that the learned Magistrate, on considering the materials available on record, including the statements of witnesses recorded under Section 161 Cr.P.C., has come to find that there is sufficient grounds for presuming that the accused-petitioner has committed the offence under Section 420 I.P.C. Relevant findings of the learned Magistrate is extracted below:--

"Perused the F.I.R., statement of witnesses U/S. 161 Cr.P.C. and other connected papers submitted by the I.O. U/S. 173 of Cr.P.C., available with case record. It appears from the joint verification report dtd. 29.6.1991 and letter of Deputy Director of Mines to General Manager, O.M.C. and copy of the same forwarded to the accused vide Memo No. 3075 dated 21.2.1992 that there was boundary dispute between the accused and O.M.C. with regard to mining lease area of accused at village Raika in the district of Keonjhar for which the accused was directed to stop the mining operation within 300 feet of either side of existing boundary of M/s. Orissa Mining Corporation Limited from Pillat No. 100 to 103 on the date of agreement with informant on dtd. 7.3.2006 such dispute was not settled. From the agreement dtd. 7.3.06 it appears that the accused represented that he was enjoying peacefully and in exclusively possession and control over the leasehold area having right, title and interest which was free from any encumbrances. On the basis of such representation, the complainant-Company has parted with huge amount of Rs. 4,00,00,000/- (Rupees Four crores) to the accused as an advance for purchase of the minerals excavated from the leasehold area of accused. From the letter dtd. 18.8.2006 and 31.10.2006 issued by Manager Mining Serenda, Bhadrasahi Mines, to I.I.C., Barbil Police Station that the boundary dispute with Orissa Mining Corporation was well existing even

after the execution of the agreement. If the complainant company was made aware of the fact of boundary dispute with Orissa Mining Corporation at the time of entering in to agreement, it might not have, agreed to advance Rs. 4,00,00,000/- (Rupees Four crores) to accused. Furthermore, in a catena of decisions, Hon"ble Apex Court have observed that charge can be framed against the accused on the ground of strong presumption." 14. At the stage of framing charge, the Magistrate is required to consider whether there are sufficient grounds to proceed against the accused. Section 239 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 240. These two sections read as under:--

"239. When accused shall be discharged.-If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.-(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

15. In State of Bihar Vs. Ramesh Singh, , the apex Court while considering the scope of Sections 227 and 228 of the Code, which are pari materia to Sections 239 and 240 of the Code, it was held that at the stage of framing of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

16. In State of Maharashtra Vs. Priya Sharan Maharaj and Others, , it was held by the apex Court that at Sections 227 and 228 stage, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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.

17. In *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, , a three-Judge Bench of the apex Court held that the Magistrate at the stage of framing charges had to see whether the facts alleged and sought to be proved by the prosecution prima facie disclose the commission of offence on general consideration of the materials placed before him by the investigating police officer. Though in that case the specific question whether an accused at the stage of framing of charge has a right to produce any material was not considered as such, but that seems implicit when it was held that the Magistrate had to consider material placed before it by the investigating police officer.

18. In *State of Delhi Vs. Gyan Devi and Others*, , the apex Court reiterated that at the stage of framing of charge the trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the Court to consider the sufficiency of the materials to establish the offence alleged against the accused persons.

19. In *State of Madhya Pradesh Vs. Mohanlal Soni*, , the apex Court held as under:--

"7. The crystallised judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

20. In *State of Orissa Vs. Debendra Nath Padhi*, , a similar question came up for determination before a three-Judge Bench of the apex Court, as to whether the trial Court can, at the time of framing charge, consider materials filed by the accused. The Hon"ble Court, while taking note of its earlier decisions, has come to hold as under:--

"16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in *State Anti-Corruption Bureau v. P. Suryaprakasam*, 1999 SCC (Cri) 373, where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial Court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.

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18. xxx Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

21. In Hem Chand Vs. State of Jharkhand, , a similar question again came up before the apex Court for consideration as to whether any documents, whereupon the appellant may rely in support of his defence can be looked into at the stage of framing of charge. Hon"ble Court, while affirming the view expressed by the three-Judge Bench in Debendra Nath Padhi (supra), held that at the time of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial. The Court at the stage of framing charge exercises its limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. At that stage, the Court would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused is able to establish his defence, if any.

22. In Bharat Parikh Vs. C.B.I. and Another, the apex Court reiterated the views expressed in Debendra Nath Padhi (supra) that at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the

investigating agency. The accused will get an opportunity to prove the documents subsequently produced by the prosecution on the order of the Court, but the same cannot be relied upon to reopen the proceedings once charge has been framed or for invocation of the High Court's powers under Section 482 Cr.P.C.

23. In *Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary and Others*, , the apex Court has reiterated the legal principle that at the stage of framing 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. The Court has to see, while considering the question of framing charge, as to whether the materials brought on record reasonably connect the accused with the alleged offence. Nothing more is required to be looked into at that stage. A strong suspicion about the commission of the offence and the involvement of the accused is sufficient for the Court to frame charge.

24. In view of the above, the legal position which crystallizes is that at the time of framing charge, the Court is not to meticulously judge the evidence proposed to be adduced by the prosecution and not to see whether there is sufficient ground for conviction, nor is any weight to be attached to the probable defence. At that stage, even a very strong suspicion founded upon materials leading the Magistrate to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges. The trial Court has to be satisfied whether there is "sufficient ground for proceeding" and not "whether there is sufficient ground for conviction". At the stage of Section 227 or 239 Cr.P.C., the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients of the offence. At that stage, the accused has no right to produce any material or summon any document or materials in addition to those collected by the investigating agency, or invite the Court to pass an order of discharge on the basis of such additional material. The Court may, for the limited purpose of framing charge, sift the evidence and if on the basis of materials on record, the Court comes to the conclusion that the commission of offence is probable consequence, a case of framing of charge exists and the order rejecting application for discharge is legal and valid.

25. Coming to the question regarding maintainability of the offence of cheating and dishonestly inducing delivery of property, Section 415 IPC deals with "cheating", which reads as follows:--

"415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.-A dishonest concealment of facts is a deception within the meaning of this Section."

26. It is plain from a bare reading of the Section that to hold a person guilty of cheating, as defined in Section 415 I.P.C, it is necessary to show that at the time of making the promise he had fraudulent or dishonest intention to retain the property or to induce the person so deceived to do something which he would not otherwise do.

27. The ingredients required to constitute an offence of cheating have been succinctly laid down by the apex Court in *Ram Jas Vs. State of U.P.*, , as follows:--

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

28. As mentioned above, Section 415 I.P.C. has two parts. While in the first part, the person must "dishonestly" and "fraudulently" induce the complainant to deliver any property, in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. A guilty intention is an essential ingredient of the offence cheating. The intention to deceive should be in existence at the time when the inducement was offered. (See- *G.V. Rao Vs. L.H.V. Prasad and Others*, and *V.P. Shrivastava Vs. Indian Explosives Ltd. and Others*,

29. The crux of the postulate is the intention of the person who induces the victim by his representation and not the nature of the transaction which would become decisive in the discerning whether there was commission of offence or not. In the present case, from the recital of the agreements entered into between the petitioner and informant Company as detailed above, it is abundantly clear that the accused-petitioner had represented that the leasehold mining area measuring 64.85 acres or 26.243 hectares containing Iron and Manganese Ore were in exclusive possession and control of the petitioner, having right, title and interest over the same, which is free from any encumbrances. Relying upon such promise, representation and assurance of the petitioner and believing the same to be correct, the informant Company agreed to purchase the entire quantity of all grades of Iron and Manganese Ore excavated from the leasehold mining area of the petitioner exclusively, as per the terms and

conditions enumerated in the agreement. On the basis of such representation, the informant Company made an advance of Rs. 4 crores to the petitioner as detailed in clause 4 of the agreement.

30. From the counter affidavit filed by the Deputy Director of Mines, Joda, it is seen that there was an existing boundary dispute between the petitioner and OMC since 1990 and as per the joint verification report dated 29.6.1991, both the petitioner and the OMC were directed not to carry out mining activities within 300 ft. on the either side of the leasehold boundary line until final decision. Further vide letter dated 17.3.1998, Deputy Director of Mines, Joda, instructed the petitioner to stop all the mining activities within the disputed area. From the said counter affidavit, it further reveals that the Deputy Director of Mines, Joda, vide his letter dated 26.8.2006 again directed the petitioner not to continue with the mining operation in the disputed leasehold area till final demarcation and determination of the mining lease boundary line. Further, though the petitioner was asked to attend the survey and demarcation of the disputed area, he did not attend the same. The counter affidavit further reveals that the mining operation of the accused-petitioner in respect of leasehold mining area over 26.243 hectares has been suspended since 06.11.2009 due to want of statutory clearance.

31. From the above, it is abundantly clear that the petitioner had intentionally misrepresented and suppressed the material fact with regard to the existing boundary dispute with OMC, while entering into agreement with the informant Company. Being induced by such fraudulent representation and/or assurance of the petitioner, the informant Company paid an advance of Rs. 4 crores. All these facts prima facie establish the offence of cheating under Section 420 IPC.

32. As regard the plea of the accused-petitioner that the dispute between the parties being essentially civil in nature, which is pending before the learned Arbitrator for adjudication, as per the arbitration clause contained in the agreement, no criminal proceeding is maintainable, the same appears to be erroneous and misconceived. It is true that if the complaint does not make out an offence, it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Accordingly, merely because a civil claim is maintainable, that in itself does not mean that the criminal complaint cannot be maintained. (See- Lalmuni Devi Vs. State of Bihar and Others,

33. In Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , the apex Court had held that merely because an act has a civil profile, the same is not sufficient to denude it of its criminal outfit. The provision incorporated in the agreement for referring the dispute to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the Arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under

the agreement.

34. In *S.W. Palanitkar and others Vs. State of Bihar and another*, , the apex Court held that merely because there is an arbitration clause in the agreement between the parties, that cannot prevent criminal prosecution against the accused, if an act constituting a criminal offence is made out even prima facie.

35. In *State of Orissa and Others Vs. Ujjal Kumar Burdhan*, , the apex Court has reiterated the well-settled principle of law that the existence of an arbitration agreement cannot take the criminal acts out of the jurisdiction of the Courts of law.

36. For the reasons as aforestated, I do not find any infirmity in the order dated 23.8.2010, passed by the learned J.M.F.C., Barbil, in G.R. Case No. 27 of 2007, rejecting the application of the accused-petitioner under Section 239 Cr.P.C. for discharge and framing charge against him under Section 420 I.P.C., so as to warrant any interference.

CRLMC being devoid of merits, the same is accordingly dismissed.