



NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRMP No. 8 of 2026**

**1** - Vikas Tiwari S/o Late Vivekanand Tiwari, Aged About 46 Years R/o House No. 38/58, Semra Bada, Danganiya Raipur, District Raipur C.G.

... **Petitioner(s)**

**versus**

**1** - State of Chhattisgarh Through District Magistrate, Raipur, District Raipur C.G.

**2** - Kunal Dubey, S/o Late Pradeep Dubey, R/o B-15, Maruti Residency, Amlidih, P.S. New Rajendra Nagar, Raipur, Tehsil And District Raipur (C.G.)

**3** - Hemantpal S/o Shankar Pal, R/o Behind Digjam Showroom, Near Santoshi Nagar, P.S. Tikrapara, Raipur, Tehsil And District Raipur C.G.

... **Respondent(s)**

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For Petitioner	:	Shri Vaibhav P. Shukla, Advocate.
For State	:	Ms. Sunita Manikpuri, Govt. Advocate.

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**Hon'ble Shri Justice Ravindra Kumar Agrawal, J**

**Order on Board**

**07.01.2026**

- The present Criminal Misc. Petition under Section 528 of BNSS, 2023 has been filed by the petitioner against the impugned order dated 30.10.2025 passed by 8<sup>th</sup> Additional Sessions Judge, Raipur, in Criminal Revision No.217/2025 whereby the Criminal Revision of the petitioner has been dismissed and the order dated 11.03.2025 passed by the Judicial Magistrate First Class, Raipur, in Criminal Case No.13508/2024, order framing charge, is affirmed.
- The subject matter in brief is that the petitioner is an accused in the offence of Crime No.262/2024 registered at Police Station Rajendra Nagar, Raipur, for the offence under Sections 452, 294 and 34 IPC on

a complaint made by Sanjay Tripathi. It is alleged that the complainant is the Administrator of Krishna Kids Academy, New Rajendra Nagar, Raipur. On 06.06.2024 he was being informed by the Headmistress of the school Smt. Jaya Bakdu through telephone that some members of NSUI entered into school premises and hurling slogans. He rushed to the school and saw that the present petitioner and other members of NSUI were hurling slogans inside the house and when he tried to stop them, they started abusing him. They also abused the female staff of the school. They felt annoyed by the abuses and after informing the Head of the institution, he lodged the report. After investigation, the charge sheet was filed against the petitioner and other accused persons before the JMFC, Raipur. Vide order dated 11.03.2025 the trial court framed charges for the offence under Sections 294, 452/34 IPC against the petitioner. The order of framing charge dated 11.03.2025 was challenged by the petitioner before the revisional court which was also dismissed by the impugned order dated 30.10.2025 and the same is under challenge in the present Criminal Misc. Petition.

- 3.** Learned counsel for the petitioner would submit that the FIR against the petitioner is a motivated complaint as he belongs to NSUI Union who are protesting the illegal running of the school against the government circulars and guidelines. The petitioner is prosecuting his grievances in WP(PIL) No.22 of 2016 in which illegal running of the school of complainant is the subject matter and only to keep away the issue, the report has been lodged. He would further submit that charge for the offence under Section 452 IPC has been framed against the petitioner, but school does not come under the definition of dwelling

house and therefore the charge under Section 452 IPC cannot be framed against him. There is no sufficient material to frame charge in the case and the petitioner may be discharged from the alleged offence by setting aside the impugned order. The petitioner would rely upon the order dated 05.09.2012 passed by Delhi High Court in case of Seema Gupta Vs. State & Others, Criminal M.C. No.3819 of 2011.

4. On the other hand, learned counsel for the State opposes and have submitted that there are prima facies sufficient evidence with respect to offence allegedly committed by the petitioner. From the statement of witnesses who are the employees of the school it is crystal clear that they have duly identified the petitioner that he also trespassed the school premises and hurling abuses. She would further submit that to frame charge against the accused persons, only the prima facie ingredients are to be considered and the trial court after considering the entire material, framed the charge against the petitioner which does not suffer from any infirmity.
5. I have heard the counsel for the parties and perused the material annexed with the petition.
6. From perusal of FIR it transpires that a named report has been lodged by the complainant that the petitioner along with other members of NSUI entered into the school premises of Krishna Kids Academy, New Rajendra Nagar on 06.06.2024 by making protest there and when the complainant tried to stop them, they started hurling abuses and misbehaved the female staff of the school. They felt annoyed by the abuse and then report has been lodged. From the statement of Sanjay Tripathi, Smt. Jaya Bakdu who is Headmistress of the school, Smt.

Tulsi Sahu, Peon, Smt. Kshama Sahu, Peon, Smt. Ombai Dhruw, Peon and Smt. Mongra Bai, Peon, it prima facie demonstrates that on the date of alleged incident the petitioner along with other members of NSUI entered into the school premises and hurling abuses to the female staff and other persons.

7. The grievance of the petitioner is that no charge for the offence under Section 452 IPC could be framed as school premise does not come under the definition of a dwelling house. Offence Under Section 452 IPC is punishable for house trespass having having made preparation for hurt, assault or wrongful restraint, which reads as under:

**“452. House-trespass after preparation for hurt, assault or wrongful restraint-**Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting and person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. The house trespass is defined under Section 442 of IPC which reads as under:

**“442. House Trespass-** Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

9. The house trespass further involve the criminal trespass which has been defined under Section 441 of IPC which reads as under:

**“441. Criminal Trespass-**Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

10. From the conjoint reading of these three Sections it would clearly demonstrate that whoever criminally trespassed by entering into any

building, tent or vessels used as a human dwelling or any building used as a place of worship or as a place for custody of the property, said to commit house trespass. There are three separate ingredients for house trespass i.e. (i) any building used as a human dwelling (ii) any building used as a place of worship (iii) any building used as a place for custody of the property. The school building would definitely cannot be a human dwelling house or place of worship but it can be considered to be a place for custody of the property where school furniture and other educational assets are being kept in safe custody. The School building was in exclusive possession of the complainant and the petitioner was not having any right to forceful enter into the premises under the possession of the complainant without their permission.

11. In the matter of ***Mangaraj Barik & Others Vs. State of Orissa, 1982 CrLJ 1631***, the Orissa High Court has held in paragraphs 5 & 6 as under :

“5. Counsel had made submissions on the question whether a school building would come under the expression "...any building, ...used as a human dwelling..." In Section 442 of the I.P.C. The learned Additional Government Advocate submitted that a schoolbuilding would satisfy the test of a building used as a human dwelling and in support of his contention he relied on the" State v. Nihal Singh MANU/PH/0527/1970 : 1971) 73 PLR 440. In that case the meaning of the expression "any building used as a human dwelling" in Section 380, I.P.C. was considered in the context of a railway waiting- room. It was observed:

There can be no dispute that a railway waiting-room is a building. The further point for consideration is whether it is used as a human dwelling. The contention of Mr. Gour, is that the word 'dwelling' in Section 380. Indian Penal Code, has a restricted meaning, viz., a house or building used as a permanent residence, and that it does not include such public places where passengers may only rest for a while awaiting the arrival of their train.

It is true that one fact of the dictionary meaning of 'dwell' is 'to remain as in a permanent residence', 'to have one's abode to reside, But that is not the only connotation of the term, which is of wide amplitude and is used in several shades and senses. The O. E. i.e., the original appearance of the word in English

(vide, Shorter Oxford Dictionary, Third Edition, and Webster's New International Dictionary, Second Edition), was 'dwellan' or 'dwellianakin to 'dull' - which originally meant to linger, delay, tarry." In current use also, it retains the meaning, "to abide, remain or linger for a time in a place or condition." Thus construed, the term "dwelling" in Section 380, Indian Penal Code, means a building, tent or vessel, in which a person lives, remains or lingers whether permanently or temporarily. A Railway waiting-room, therefore is a 'building used as a human dwelling' and a theft committed therein would be punishable under Section 380, Indian Penal Code.

As pointed out in the aforesaid decision, a building need not be used as a place of permanent residence in order to be considered as a human dwelling. In the present case there can be no dispute that the school is a building and on the strength of the reasoning adopted in the aforesaid decision, I would further hold that a school is a building used as a human dwelling within the contemplation of Section 442, of the I.P.C. I would therefore agree with the learned Courts below that the prosecution has fully brought home the charge under Section 448, I.P.C. against the petitioners.

6. This revision which has no merit is accordingly dismissed. The conviction and sentence of the petitioners are confirmed."

12. From the entire material annexed with the petition, this court does not find any infirmity or illegality in framing charge against the petitioner for the offence under Section 452 IPC.
13. The Hon'ble Supreme Court has laid down the principles in the case of ***State of M.P. vs. Deepak, 2019 (13) SCC 62***, wherein it has been held that at the stage of framing of charge, the court has to consider the material only with a view to find out if there is a ground for presuming that the accused had committed the offence. It is also held that the court is required to evaluate the material and documents on record with a view to finding out if facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence and at the stage of framing charge, the court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence

recorded is likely to be convicted or not. In the matter of **Deepak** (Supra), in its judgment, the Hon'ble Supreme Court has held that:-

**"14.** It is of relevance to refer to certain judgments of this Court. In *Chitresh Kumar Chopra v. State (NCT of Delhi)*, the appellant and two other individuals were charged under Section 306 read with Section 34 of the Penal Code. It had been alleged that the appellant and the other accused persons had forcibly compelled the deceased to sign a settlement giving up a part of his share in the profits from the sale of certain land. This led to a dispute and as a result of the mental harassment suffered by the deceased, he committed suicide. The Court affirmed the framing of charges by the trial court. The two-Judge Bench of this Court laid down the ingredients of the offence of abetment of suicide. D.K. Jain, J. held thus: (SCC p. 611, para 19)

*"19. As observed in Ramesh Kumar v. State of Chhattisgarh, where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:*

*(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and*

*(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above Undoubtedly, presence of mens rea is the necessary concomitant of instigation."*

*(emphasis supplied)*

**15.** After due consideration of the facts and circumstances, the Court noted that prima facie, the offence of abetment of suicide was made out (Chitresh Kumar Chopra case, SCC p. 612, para 22)

*"22. In the present case, apart from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellant herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life and therefore. clause Firstly of Section 107 IPC was attracted."*  
*(emphasis supplied)*

**16.** It was also noted that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence: (Chitresh Kumar Chopra case, SCC p. 613, para 25)

*"25. It is trite that at the stage of framing of charge, 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 or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction"

17. A two-Judge Bench of this Court, in *Rajbir Singh v. State of U.P.* noted that in accordance with Section 227, the High Court must ascertain whether there is "sufficient ground for proceeding against the accused of there is ground for "presuming that the offence has been committed. G.P. Mathur. J. held thus: (SCC p. 56, paras 9-10)

*"9. In Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia the Court while examining the scope of Section 227 held as under:*

*'14. Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused. The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evadentiary material on record, if generally accepted, would reasonably connect the accused with the crime."*

*10. The High Court, did not at all apply the relevant text, namely whether there is sufficient ground for proceeding against the accused or whether there is ground for presuming that the accused has committed as offence. If the answer is in the affirmative an order of discharge cannot be passed and the accused has to face the trial. The High Court after merely observing that 'as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was passing through that way and she was hit and further observing that the applicant neither intended to kill the deceased nor was she aimed at because of the reason that she was a Scheduled Caste set aside the order by which the charges had been framed against Respondent 2. There can be no manner of doubt that the provisions of Section 301 IPC have been completely ignored and the relevant criteria for judging the validity of the order passed by the learned Special Judge directing framing of charges have not been applied. The impugned order is, therefore, clearly erroneous in law and is liable to be set aside."*

*(emphasis supplied)*

14. In the matter of ***Captain Manjit Singh Viridi vs. Hussain Mohammad Shattaf and Others 2023 (7) SCC 633***, the Hon'ble Supreme Court has held in para 12 of its judgment that:-

“12. The law on the point has been summarised in a recent judgment of this Court in *State of Rajasthan v. Ashok Kumar Kashyap*<sup>3</sup> Relevant paras are extracted below: (SCC pp. 197-98, para 11)

“11....11.1. In *P. Vijayan v. State of Kerala*, this Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2 to the recent decision of this Court in *State of Karnataka v. MR. Memah*, one of us (D. Y. Chandrachud, J) speaking for the Bench has observed and held in para 25 as under: (SCC p. 526)

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 219 CPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of N. v. N. Suresh Rajan*, advertent to the earlier decisions on the subject, this Court held: (N. Suresh Rajan case, SCC 721-22, para 20)

“29..... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the

materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge, though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

15. The judgment relied upon by the counsel for the petitioner in *Seema Gupta (Supra)* though considered that school building does not come under the definition of dwelling house, but the definition of "used as a place for custody of the property" has not been dealt with. Therefore, no benefit could be extended to the petitioner by the judgment cited by him.
16. In view of the above facts and circumstances of the case, the evidence available in the charge sheet as well as in the aforesaid law laid down by the Supreme Court, the present petition does not have any merit and is hereby dismissed.

Sd/-  
(Ravindra Kumar Agrawal)  
**Judge**

inder