

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (C) No. 3213 of 2007**

Amarnath Pandey, aged about 41 years, Occupation-Advocate, S/o Shri Brijraj Pandey, R/o Ambikapur, Agrasen Ward, Police Station Ambikapur, District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, Ministry of Home Affairs, Government of India, New Delhi.
2. State of Chhattisgarh, Through the Secretary, Government of Chhattisgarh, Department of Home Affairs, DKS Bhawan, Mantralaya, Raipur, Chhattisgarh
3. The Director General of Police, Government of Chhattisgarh, Raipur, Chhattisgarh.
4. The Inspector General of Police, Surguja Range, Ambikapur, District Surguja, Chhattisgarh.
5. The Superintendent of Police, Ambikapur, District Surguja, Chhattisgarh.
6. The Superintendent of Police, Police District Balrampur, Balrampur, Chhattisgarh.
7. S.R.P.Kalluri, Presently working as Superintendent of Police, Police District Balrampur, District Surguja, Chhattisgarh.
8. Brijesh Tiwari, Presently working as Assistant Platoon Commander, 6th Battalion, Chhattisgarh Armed Force, Police District Balrampur, District Surguja, Chhattisgarh.
9. Dhiraj Jaiswal S/o Sachidanand Jaiswal, aged about 20 years, Special Police Officer, Samari Police Check Post Police Station Kusmi, Police District Balrampur, District Surguja, Chhattisgarh.
10. Dr. Raman Singh, Hon'ble Chief Minister of Chhattisgarh, Raipur, Chhattisgarh.
11. Shri Ramvihar Netam, Hon'ble Home Minister of Chhattisgarh, Raipur.
12. Shri Amarnath Upadhyaya, Inspector General of Police, Surguja, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Kishore Narayan, Advocate with Petitioner in Person.
For Respondent/UOI	: Ms. Purnima Singh, Advocate.
For Respondent/State.	: Shri B. Gopa Kumar, Deputy Advocate General

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri P. Sam Koshy, J.

Order on Board

Per Navin Sinha, Chief Justice

18/08/2015

1. The Petitioner is a practicing Advocate at District Court, Ambikapur. It is his case that he is also a social activist raising issues of human rights which has aroused the ire of the authorities concerned personally against him because of which he has had to file the present writ petition.
2. Learned Counsel for the Petitioner submits that a tribal lady named Leda was accused of being a Naxalite. Her husband was killed in a false police encounter and she was subjected to rape by policemen. She filed Writ Petition (Cr.) No. 14 of 2007 before this Court. The Petitioner was her Counsel in a Complaint case against the concerned police officials. Her statement was recorded in camera by the Judicial Magistrate First Class on 27.6.2007 which is spine chilling to read. He has also filed a complaint case against a fake encounter by the police of one Narayan Khairwar. The prosecution witnesses had filed Writ Petition (Criminal) No. 2574 of 2007 before this Court seeking protection. The Petitioner faced threats from the police authorities for discharge of professional duties. He was labeled as a white collared Naxalite by the Respondents.

3. The Magistrate had recorded the demur of Leda when she started crying during her statement. Her father, Tear Uraon, supporting the complaint, as witness also stated on 16.7.2007 in Court that the police were pressurizing him to withdraw the case. The police forced the father of Leda to lodge an F.I.R. Shankargarh P.S. Crime No. 14 of 2007 on 19.8.2007 alleging that his daughter was missing and that he had learnt that the brother of the Petitioner, also a lawyer had forcibly kept her at another place. The Petitioner was not named as an accused. The police also pressurised Leda to file an application for withdrawal of the complaint case filed by her.

4. It is the further case of the Petitioner that because of the aforesaid incidents his car was torched by certain police personnel. He had lodged a report on 25.12.2007 before the Ambikapur police station naming the concerned police officers. Despite a cognizable offence being disclosed no F.I.R was registered. Resultantly, the Petitioner was made an accused in Crime No. 14 of 2007 on 11.12.2008 even while his complaint was never enquired into by the police.

5. Considering all these aspects of the matter, on 23.8.2007, this Court called upon the Respondents to explain why police protection be not given to the Petitioner and directed personnel appearance of the Director General of Police. On 10.9.2007, the Superintendent of Police was directed to explain the conduct of Respondent No. 9, Dhiraj Jaiswal, Special Police Officer, Kusmi Police Station. On 8.10.2007, this Court noticed that despite its orders police protection was not provided to the Petitioner. Only thereafter police protection was provided to the Petitioner. The frivolousness of the allegations

in Crime No. 14 of 2007 is evident from the fact that till date admittedly no investigation has been done by the police. The police also has not bothered to investigate the complaint lodged by the Petitioner regarding torching of his car on 25.12.2007.

6. The Petitioner apprehends that if this writ petition is disposed, not only the police protection provided to him would be withdrawn but that certain persons in the police department may act vindictively against him unbridled by the pendency of any matter before the Court. Referring to order dated 23.8.2007 emphasising seriousness of the matter, Learned Counsel refers to the following passage:

“Liberty is granted to learned counsel for the Petitioners to move an application at any time even in odd hours if any further threat is extended to him.”

7. Learned Counsel for the State submits that the writ petition has substantively become infructuous as police protection was provided to the Petitioner. With passage of time, officers against whom the Petitioner had a grievance would have moved out from their place of posting by now seven years later. It was denied that the police had been acting in an arbitrary manner. Naxalism had posed problems in District Surguja. Some people with a soft corner for Naxalites had embarked on a mission to demoralise police personnel by preventing discharge of duties by raising frivolous issues in unnecessary litigation. The story with regard to Leda and Narayan Khairwar are all fabricated. The investigation in Crime No. 14 of 2007 could not be completed because of the police protection granted to the Petitioner by this

Court and which prevented his arrest. The police is ready to complete investigation after arresting the Petitioner. The complaint filed by the Petitioner on 25.12.2007 was missing. The police had received a duplicate copy of the complaint from the office of the Advocate General and the Town Inspector, Ambikapur has been directed on 13.3.2015 to expeditiously investigate and report. There is no merit in the writ petition and it may be dismissed.

8. The submissions made on behalf of the parties have been considered.

9. In the facts of the case, the Court earlier was satisfied with regard to the threat to the Petitioner because of discharge of professional duties. Directions were issued to provide him police protection granting liberty to move the Court if necessary even at odd hours for his protection. The Respondents never challenged these orders and on the contrary complied the same.

10. The counter-affidavit of the Respondents filed on 25.9.2007 states that in the name of social activism certain persons (which obviously is an innuendo to the Petitioner) having a soft corner for Naxalites had embarked on a mission to demoralize the police force and in the name of social activism frivolous cases were being filed against police persons to keep them engaged in unnecessary litigation preventing discharge of police duties. The cases sought to be espoused by the Petitioner did not by mere co-incidence relate to Naxalites. The Petitioner was labeled as white collared Naxalite. A bare consideration of the stand taken by the Respondents does not leave much for imagination with regard to ire of the police.

11. The Court never directed stay of investigation in Crime No. 14 of 2007. If the investigation was being hindered because the Petitioner was not cooperating on account of the police protection afforded to him, nothing prevented the Respondents from inviting it to the attention of the Court and obtaining appropriate orders. Likewise, the contention of the police that the Petitioner's complaint dated 25.12.2007 went missing and issuing directions as late as 13.3.2015 for enquiring into the same again is a conduct which speaks for itself and needs no greater discussion. A bare reading of the complaint reveals a cognizable offence which was required to be registered and investigated. No explanation whatsoever has been given by the Respondents. We do not wish to say anything more as the facts speak for themselves.

12. In response to the order dated 10.9.2007 asking the Superintendent of Police to explain conduct of Respondent No. 9, Dhiraj Jaiswal, Special Police Officer, the affidavit dated 25.9.2007 filed by the Additional Superintendent of Police states that explaining the conduct of Respondent No. 9 in the open Court would result in revealing confidential issues and endangering life of Respondent No. 9. It was therefore necessary that conduct of Respondent No. 9 was placed before the Court in camera proceedings. Under our system of justice, proceedings in the Court are held in open. It is only in matters relating to sexual offences or where issues of national security may be involved, camera proceedings are resorted to. It is difficult to understand that if the Petitioner was leveling allegations against Respondent No. 9 for alleged abuse of official power and position, what were the highly confidential issues of national importance which could not be told in open Court that Respondent

No. 9 was acting in due discharge of duties and was not abusing his power and authority. The affidavit compels us to draw an adverse inference against the Respondents.

13. An F.I.R can also be quashed at the inception if the facts of the case reveal that it was the result of personal vendetta and grudge to settle scores. The power is to be exercised sparingly and cautiously. But if the facts are telling the Court will exercise justice in a particular case. No explanation worth the name let alone even lame has been furnished why for nearly eight years the police has not been able to complete investigation. Conclusions can fairly be drawn in the facts of the case based on prudent human behaviour.

14. In (1992) Supp. 1 SCC 335 (State of Haryana v. Bhajan Lal) laying down broad guidelines for quashing of the F.I.R it was observed at paragraph 102 :-

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. We therefore quash the F.I.R registered as Shankargarh P.S. Crime No. 14 of 2007 with regard to the Petitioner as he has petitioned for the same. The security apprehension of the Petitioner consequent to disposal of the writ petition is allayed by observing that if the Petitioner represents for police protection, the concerned Superintendent of Police is required to consider the representation in accordance with law and dispose it by a reasoned and speaking order especially if he opines adverse to the Petitioner. This may not be construed as any opinion or observation hindering free exercise of mind and discretion by the police to its satisfaction.

16. The conduct of the Respondents with regard to the Petitioners complaint dated 25.12.2007 and failure to register a police case was clearly a case of blatant refusal to perform statutory duties. It was a mandatory and statutory duty of the police to register a case and take it to its logical conclusion since it disclosed a cognizable offence. Reference may conveniently be made to (2008) 7 SCC 164 (Lalita Kumari v. State of Uttar Pradesh). It is very difficult to comprehend what kind of investigation the police now proposes to do after over 7 ½ years when the evidence itself may have been lost by passage of time. We therefore direct the Inspector General of Police, Surguja Range, Ambikapur to hold an administrative enquiry as to why the first information report was not registered on the Petitioner's complaint dated 25.12.2007 and take the matter to its logical conclusion by appropriate departmental action against the concerned. Needless to state that this direction cannot be interpreted in any other manner and has to be complied with strictly in accordance with law with due opportunity to the concerned at every stage.

17. The writ petition is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE