

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 46 of 2015**

Bhanwar Lal Parakh S/o Late Shri K.L. Parakh, Aged About 62 years Occupation Advocate R/o Gandhi Chowk, Jain Gali Brahmanpara Ward, Durg, Tahsil & District Durg Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh through the Secretary, Department of Urban Administration, Mahanadi Mantralaya, Naya Raipur, post office & police station Naya Raipur, District Raipur Chhattisgarh.
2. Director, Town & Country Planning Department, State of Chhattisgarh, Raipur Chhattisgarh.
3. Deputy Director, Town & Country Planning Department, Durg Chhattisgarh.
4. The Tehsildar, Durg Chhattisgarh.
5. The Station House Officer, Police Station City Kotwali, Durg Chhattisgarh.
6. Municipal Corporation, Durg, through its Commissioner, Durg Chhattisgarh.
7. The Commissioner, Municipal Corporation, Durg Chhattisgarh.
8. Building Officer, Municipal Corporation, Durg Chhattisgarh.

---- Respondents

For Appellant	:	Shri Rajeev Shrivastava and Shri Malay Shrivastava, Advocates.
For Respondents No. 1 to 5:	:	Shri U.N.S. Deo, Government Advocate.
For Respondents No.6 to 8 :	:	Shri A.S. Kachhawaha, Advocate.

**Hon'ble Shri Navin Sinha, Chief Justice &
Hon'ble Shri P. Sam Koshy, J.**

Judgment On Board**Per NAVIN SINHA, C.J.****29/4/2015**

1. The present appeal arises from the order dated 1.8.2012 dismissing Writ Petition (Criminal) No. 4404 of 2009. The Learned Single Judge declined to accept the submission of the prosecution being time barred

and held that the offence was a continuing one. The prayer for quashing the F.I.R No. 372 of 2009, dated 23.7.2009, registered under Section 292-C(3) of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called 'the Act') was rejected.

2. Learned Counsel for the Appellant submits that Section 292-C(3) of the Act provides for punishment. Section 396 of the Act provides the procedure for institution of prosecution against the developer. At the time the FIR was lodged, the punishment was only six months, making it a non-cognizable offence with regard to which no FIR could have been lodged. It was made a cognizable offence in the State of Chhattisgarh by amendment in 2011. It is next submitted that Section 396 provides that the Magistrate shall not take cognizance of any offence under the Act or under the Rule or Bye-laws except on a complaint by the Commissioner or Municipal Officer or by Officer in Charge of the Police Station authorised by the Commissioner generally or specifically. If the statute itself provides for initiation of a prosecution only on the basis of a complaint, an FIR was not maintainable. He relies on 1962 Supp. (2) SCR 812 (Daulat Ram v. State of Punjab) and (2009) 7 SCC 526 Jeevan Kumar Raut v. Central Bureau of Investigation).

3. Learned Counsel for the Respondents submits that if the FIR has been lodged and it has now been made a cognizable offence keeping in mind that the Appellant was a developer and there are serious allegations against him, the Court may not interfere with the investigation.

4. We have considered the respective submissions. Section 396 of the Act, reads as follows:

“396. Procedure in prosecution. - No magistrate shall take cognizance of any offence under this Act or under

any rule or bye-law made thereunder, except on a complaint signed by the Commissioner or by any Municipal Commissioner in this behalf either generally in regard to all such offences or particularly in regard to specific offences or offences of a special class.”

5. The Statute provides that a prosecution can be initiated only on a complaint lodged before the Magistrate either by the Commissioner or by any Municipal Officer or the officer in charge of the Police Station authorised by the Commissioner, generally or specifically. If the Statute provides a particular mode for initiation of prosecution, it can be done only in that manner and other modes of initiation of the prosecution are therefore prohibited.

6. In the present case, the officer-in-charge of the Durg Police Station has registered F.I.R. No. 372 of 2009, dated 23.7.2009 on the statement of one Shri R.K.Jain, Building Officer of Municipal Corporation, Durg. Quite obviously, in view of Section 396 of the Act, an FIR was not maintainable in view of the specific statutory prescription for lodging of a complaint before the Magistrate.

7. In Daulat Ram (supra), it was noticed as follows:

“The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of s. 195. The words “no court shall take cognizance” have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.”

“...It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand, what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer.....What the Section

contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore without the complaint in writing of the public servant namely the Tehsildar in this case.....”

8. In Jeewan Kumar Raut (supra), the statutory provision read as follows:

“22. Cognizance of offences. - (1) No court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the appropriate authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the appropriate authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the appropriate authority concerned, of the alleged offence and of his intention to make a complaint to the court.

(2) No other court other than of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the appropriate authority to make available copies of the relevant records in its possession to such person.”

9. The Court observed as follows:

“25. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.

26. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a

complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable.

28. To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.”

10. The aforesaid discussion leads us to the conclusion that in view of the provisions of Section 396 of the Act, the FIR is held to be not maintainable in the law being without jurisdiction. The prosecution of the Appellant contrary to the procedure provided under the law is held to be illegal. Consequently the F.I.R is quashed.

11. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE