

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 156 of 2015

1. Hemant Chandra, S/o Late Dayaram Chandra Aged About 54 Years Resident of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.
2. Onkar Prashad Chandra S/o Late Dayaram Chandra Aged About 61 Years, Resident of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.
3. Ravindra Kishor S/o Onkar Prasad Chandra, aged about 41 Years Resident Of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.
4. Madan Chandra S/o Late Narmada Prasad Chandra, aged About 38 Years Resident of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.
5. Babulal Chandra S/o Late Ramsingh Chandra, aged about 48 Years resident Of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.
6. Gangadhar Chandra @ Jogi, S/o Late Ramgopal Chandra, aged About 62 Years, resident of Village Thuthi, Post Office Thathari, Police Station and Tahsil Jayjayspur, District Janjgir-Champa, C.G.

---- Petitioners

Versus

1. State of Chhattisgarh, through Station House Officer Police Station Jayjayspur, District Janjgir-Champa, C.G.
7. Ramesh Nayak S/o Late Vrndavan Nayak Aged About 34 Years Resident Of Village Thuthi, Post Office Thathari, Police Station And Tahsil Jayjayspur, District Janjgir-Champa, C.G.

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For the Petitioners	:	Mr. Yogesh Kumar Chandra, Advocate.
For Respondent No.1	:	Mr. S.C. Khakharia, Dy. Advocate General
For Respondent No.2	:	Mr. Ramesh Nayak, in person.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

20.08.2015

1. The petitioners have prayed to invoke powers of the Court under section 482 Cr.P.C., to quash the FIR dated 13.10.2013. The

petitioners have submitted that in pursuance of a complaint made by respondent No.2 Ramesh Nayak under Section 156(3) of Cr.P.C., before the JMFC, Jaijaipur, Crime No.245/2013 was registered.

2. Learned counsel for the petitioners initially referred to the document Annexure A-3 which was initial report made on 22.10.2011 to the SHO, P.S. Jaijaipur, District Janjgir and would submit that allegations were levelled against persons Hemant Chandra, Onkar, Dayaram, Ravindra Kishre, Gangadhar (Jogi Chandra) that they had abused respondent No.2 Ramesh Naik and have extended threat to kill him because he has applied for certain information under Right to Information Act. He would submit that false allegations were made as on the date complainant/respondent No.2 was at Bilaspur that is far away from the place of accident. He further referred to Annexure A-4 and stated that subsequently a report was made by Ramesh Naik wherein the name of Madan Chandra, petitioner No.4 and Babulal, petitioner No.5 were added though they were not mentioned in the initial report and therefore submits that the petitioners have been falsely implicated in this case. He further submits that subsequently an application u/s 156(3) Cr.P.C., was filed and without hearing the petitioners, the cognizance has been taken. The learned counsel referred to a case law reported in ***AIR 2014 SC Supplementary 1801 - Anil Kumar Vs. M.K. Aiyappa*** and would submit that the direction to police to investigate the matter cannot be passed mechanically and the order must reflect that what weighed with the Magistrate to order of investigation under Section 156(3). It is, therefore, contended that the order of investigation could not have been passed by the Court below. He also submits that respondent No.2 himself was involved in some criminal case and it was the basis for grant of bail to the petitioners. Consequently taking into overall facts and circumstances, it would show that the FIR is false and it requires to be quashed at the

threshold.

3. Per contra, respondent No.2 Ramesh Nayak appearing in person would submit that the incidents of 22.10.2011 & 25.10.2011 though were reported but the facts and circumstances were prevailing in the village much prior to these incidents. He referred to the report which was made to the Station House Officer on 16.10.2011 and further referred to the report and written complaint dated 18.10.2011 & 21.10.2011 respectively which were made to the Police Officers at Bilaspur. He further submits that in this case after investigation, the charge sheet has been filed and during the course of trial, the charges have also been framed which is not disputed by the petitioners.
4. A perusal of the order sheet filed along-with reply shows that the charges have been framed on 23.7.2014 and thereafter the case was fixed for evidence on 10.09.2014. Reading of the order sheet would show that the learned Judicial Magistrate First Class after going through the documents of the charge sheet had found that *prima facie* case is made out and consequently, the charges were framed. Therefore on the submission of parties, it is clear that the case is at the stage of evidence after framing the charges.
5. The Supreme Court in a case law reported in ***AIR 2013 SC 52 – Shoraj Singh Ahlawat Vs. State of U.P*** has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

“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.”

6. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in ***Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)***.
7. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not 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. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicants, cannot be accepted as prima facie the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?
8. Therefore, reading the contents of FIR and the documents would go to show that strong suspicion about existence of facts constituting offence is made out at this stage, when the evidence is not adduced.

9. Further the Supreme Court in a case law reported in ***M/s. Zandu Pharmaceutical Works Ltd. And others v. Md. Sharaful Haque and others (AIR 2005 SC 9)***, held thus :-

“8. *Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle “quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow*

any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look in to the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

10. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the petitioner cannot be accepted as gospel truth. The same has to be decided on the floor of the Court during evidence while they are tested by virtue of examination and cross examination.
11. Consequently, the petition to quash the FIR dated 13.10.2013 is without any merit and it is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**