

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 616 of 2011**

- Akhil Bharat Hindu Mahasabha Through: Raipur Jilaadyaksh Mahant Hridas Tyagi, Shri Guru Shri Anant Vibhushit Yogadhiraj Bramharishi Shri Barfani Dada Ji Maharaj, Raipur (C.G.)

---- Petitioner**Versus**

1. Taran Prakash Sinha
2. Shriman Anuvibhagiya Adhikari avam Panjiyak Sarvajanik Nyas Adhikari avam Bhu Arjan Adhikari, Raipur (CG) Address: Tahsil campus, Raipur (CG)
3. P.P. Mishra Paden Bhu-Arjan Clarke (Vachak) Office of Anuvibhagiy Adhikari & Panjiyak Sarvjanik Nyas And Bhu-Arjan Adhikari, R/o. Tahsil Campus, Raipur (C.G.)
4. Lochan Giri S/o. Lealgiri R/o. Mahodavghat Raipura, Thana-D.D.Nagar, Raipur (C.G.)

---- Respondent**And****CRR No. 617 Of 2011**

- Dattatraya Mandir Trust

---- Petitioner**Vs**

1. Shriman S.D.O.
2. Taran Prakash Sinha Pithasin Paden Anuvibhagiy Adhikari & Panjiyak Sarvjanik Nyas And Bhu-Arjan Adhikari, R/o. Tahsil Campus, Raipur (C.G.)
3. J.L. Dhangar Paden Bhu-Arjan Clarke (Vachak) Office Of Anuvibhagiya Adhikari & Panjiyak Sarvjanik Nyas And Bhu-Arjan Adhikari, R/o. Tahsil Campus, Raipur (C.G.)
4. Chetn Dandvante S/o.Govind Dandvante R/o. Purani Police Line, Purani Basti, Raipur (C.G.)
5. Somchand Verma S/o.Narayan Verma R/o. Sindhi Kirana Dukan Ka Pas Bramhapuri, Purani Basti Raipur (C.G.)
6. Sudhakar Manohar Mule S/o. Manohar Martande Mule, R/o. Mig.1-75 Hudko Bhilai, Distt. Durg (C.G.)
7. Shrikant Damle S/o. Manohar Rav Damle, R/o. Near Bus Stand Abhanpur, Thana Abhanpur, Distt. Raipur (C.G.)
8. Vinod Kumar Shesh S/o. Gopal Shav Shesh, R/o. Bank Of India Ke Pas Tatyapara Raipur, Thana Purani Basti, Raipur (C.G.)

---- Respondent

Applicant Mahant Haridas Tyagi is present in person.

Shri Kashi Shakeel, counsel for respondents 1 & 3 in Cr.R. No.616/11 and for respondent No.2 in Cr.R. No.617/11.

Smt. Shobha Kashyap, Dy. Govt. Advocate for the State/ respondent No.2 in Cr.R. No.616/11 & for respondent No.1 in Cr.R. No.617/11.

Shri Shivendu Pandya, counsel for respondent No.4 in Cr.R. No.616/11.

Shri SK Dadsena, counsel for respondent No.3 in Cr.R. No.617/11.

Shri Sameer Oraon, counsel for respondents 4 & 6 in Cr.R. No.617/11.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

16/04/2015

By this common order, above mentioned both the criminal revisions filed by the applicant under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') are being disposed of.

2. Brief facts mentioned in these two criminal revisions are that the applicant/complainant filed two complaints against the non applicants before the Special Judge, under Prevention of Corruption Act, 1988/First Additional Sessions Judge, Raipur, which were pending for disposal. On 25.5.2011 when the case is called for hearing before the concerned Special Judge, the applicant/complainant did not appear and also there was no representation on his behalf, hence, the Special Judge dismissed the complaint cases on the ground of non prosecution, against which the applicant has preferred these revisions and prayed

that order of the dismissal of the complaint cases for non prosecution on 25.5.2011 may be set aside and the both the complaint cases may directed to be restored for further hearing as per law.

3. Heard learned counsel for the parties finally.

4. The applicant in person submits that on 25.5.2011 he could not appear in both the unregistered criminal cases pending before the Special Judge as he was languishing in jail in connection with some other matter since 23.4.2011 and the said fact was communicated to the learned Special Judge through an application filed on his behalf on 30.4.2011. The learned Special Judge ought to have called him through production warrant. Hence, by filing these revisions, the applicant has prayed that the impugned orders may be set aside.

5. Per contra, learned counsel for the non-applicants submit that scope of criminal revision is very limited. It was for the applicant to prove that illegality was committed by the trial Court. The trial Court has no jurisdiction to restore the complaint cases and only the High Court under its jurisdiction under section 482 of the Code can order for the same. On 25.5.2011 the complainant was not present and also there was no representation on his behalf. Under the circumstances, the learned Court was left with no other option except to dismiss the complaint cases for non prosecution, thereby the trial Court has not committed any illegality. The only remedy available to the applicant is to come before this Court for restoration of his cases under Section 482 of the Code. Learned counsel for the respondents placed reliance on **(1986) 2 SCC 709 Major General AS Gauraya and another vs. SN Thakur and another** in which the Hon'ble Supreme Court held that once the Magistrate dismisses the complaint and acquits the accused

on the ground of non appearance of the complainant, he has no jurisdiction to restore and revive the dismissed complaint on subsequent application of the complainant. The Court does not permit the Magistrate to exercise his inherent jurisdiction which he otherwise does not hold. They further submit that by filing repeat complaint the Hon'ble Supreme Court reinstated above principles of law. The matter is also applicable to the present case. Hence, both the revisions may be dismissed.

6. In order to appreciate both the arguments advanced on behalf of the parties, I have perused the material filed before this court.

7. On due consideration, so far as the facts are concerned, it is undisputed that the applicant has filed two complaint cases before the Special Judge which were pending for consideration. On 25.5.2011 the learned Special Judge dismissed the unregistered complaint cases on the ground of non prosecution as there was no representation on behalf of the applicant. It is also not in dispute that on 30.4.2011 an application under Section 256 of the Code was filed on behalf of the applicant through his lawyer informing that the applicant is languishing in jail in connection with some other case since 23.4.2011, hence the applicant may be called through production warrant. It is also not in dispute that the learned trial Judge has not made any order on the said application filed under Section 256 of the Code by the applicant. It was the duty of the Court that whenever an application is filed, the same may be disposed of with effective order. On perusal of the order sheet dated 30.4.2011 it appears that the Court has said nothing regarding the prayer made by the applicant in his application. If the Court had dismissed the application, the applicant would have option to go for any

other forum. But since there was no order on the said application it cannot be said on the part of the applicant that he was required to remain present on 25.5.2011.

8. There was no representation on behalf of the non-applicants on 25.5.2011.

9. As per the settled law and as per the case law cited, the Magistrate/trial Court has no jurisdiction under Section 482 of the Code. There is no provision regarding restoration of complaint case by the Magistrate. The applicant has not filed any application for restoration of his complaint cases before the trial Court, he straight away filed these revisions. Hence, the case law cited is not applicable in the present case.

10. This revisional court has to see whether any illegality or impropriety or incorrectness was committed by the court below. As the complainant and his lawyer were not present before the Court on 25.5.2011, the trial Court dismissed both the complaints for non prosecution and on bare reading of the order shows the correct appreciation in the case and there was no option left with the Court as no body appeared before the trial Court on 25.5.2011. But so far as the information that the complainant is languishing in jail since 23.4.11 and the same was informed to the trial Court by the counsel of the applicant by filing an application, on which no order was made by the trial Court either dismissing the prayer or accepting the prayer or call the complainant through production warrant. In these circumstances, in the considered view of this Court, the trial Court has committed an error as he was supposed to take a decision on the application on 30.4.11 as expected from the trial Court. In the considered view of this Court,

both the ordersheets have to be read jointly and in the view of Court the trial Court has committed illegality and irregularity by not making any speaking order on the application filed under Section 256 of the Code.

11. Inherent power of the Court may be used even without any prayer by the applicant. In view of this Court, for applying inherent power the High Court is not power less and even it can utilise or apply it without any prayer for it. This is a fit case where inherent power of this Court can be applied as there is illegality and gross negligence on the part of the trial Court for not taking any decision or passing a speaking order on the application filed regarding non appearance of the complainant vide ordersheet dated 30.4.2011.

12. To part with, in view of this Court, as illegality and impropriety was committed by the Court below, it is the duty to this Court to interfere by applying the powers provided under Section 397 read with Section 401 of the Code along with inherent power of this Court.

13. Consequently, both the revisions are allowed. The orders dated 25.5.2011 passed in both the unregistered complaint cases by the Special Judge are hereby set aside. Parties are directed to remain present before the Special Judge under the Act on 28.5.2015 either in person or through their counsel for further proceedings which were taking part prior to 25.5.2011. The trial Court is also directed to proceed further in both unregistered complaint cases in accordance with law.

(Chandra Bhushan Bajpai)
JUDGE

