

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 461 of 2013**

1. Pushpal Swarnkar aged about 38 years S/o Shri Sant Ram Swarnkar
2. Sant Ram Swarnkar aged about 68 years S/o late Shri C.L. Swarnkar
3. Smt. Kiran Swarnkar, aged about 63 years, w/o Shri Sant Ram Swarnkar.

All residents of near Panchsheel School Muktnagar, Padmanbhpur, Durg,
Tah & District Durg (CG), PS Durg PIN 491001

---- Appellants**Versus**

1. State of Chhattisgarh Through Principal Secretary Department of Home Ministry Govt. of Chhattisgarh, Secretariate DKS Bhawan, Raipur, Revenue District and Tahsil Raipur, Chhattisgarh.
2. Director General of Police, Police Ground, Raipur, PIN 492 001 Revenue District Tahsil Raipur, Chhattisgarh.
3. Sr. Supdt. of Police Collectorate Durg 491001, PS Durg, Tah & District Durg, Revenue Distt Durg, Chhattisgarh.
4. Station House Incharge Mahila Police Station, Durg PIN 491 001, Revenue Distt Durg, Chhattisgarh.
5. Station House Incharge, PS Supela Bhilai, Pin 490023, PS Supela, Revenue District and Tah. Durg, Chhattisgarh.
6. Smt. Nikita Swarnkar W/o Shri Pushpal Swarnkar Aged About 28 Years R/o House No. 48, Nehru Nagar (West), PIN 490023 Bhilai, Revenue District and Tahsil Durg, PS Supela, Chhattisgarh.

---- Respondents**And****Writ Appeal No. 462 of 2013**

Sant Ram Swarnkar S/o Late Shri C.L. Swarnkar, Aged About 68 years R/o P-182/43, Muktnagar, Near Panchsheel Academy Padmanabhpur, Durg-491001, PS Durg, Revenue Dist, Tahsil Durg, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Principal Secretary Department of

Home Ministry, Government Of Chhattisgarh, Secretariat, DKS Bhawan, Raipur, Revenue District and tahsil Raipur, Chhattisgarh.

2. Superintendent of Police District Durg, PS Durg, Revenue District and Tahsil Durg, Chhattisgarh.
3. Station House Incharge, PS Supela, district Durg, Pin 490023, PS Durg, Revenue District and tahsil Durg, Chhattisgarh.
4. District Prosecution Officer Durg Pin 491 001, PS Durg, Revenue District and Tah Durg, Chhattisgarh.
5. Smt. Nikita Swarnkar, W/o Shri Pushpal Swarnkar, Aged About 28 Years R/o House No. 48, Nehru Nagar (West), PIN 490023 Bhillai, PS Supela, Revenue District and Tah. Durg, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Saleem Kazi, Advocate.
For Private Respondent	:	Smt. Indira Tripathi, Advocate.
For Respondent/ State	:	Shri U.N.S. Deo, Government Advocate.
Amicus Curiae	:	Shri Prafull Bharat, Advocate.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board

Per NAVIN SINHA, C.J.

24/6/2015

1. The present appeals arise from a common order dated 25.6.2013 passed by the Learned Single Judge in Writ Petition (Cr) Nos. 3566 of 2010 and 5928 of 2010. The Learned Single Judge opined that since in both the First Information Reports (FIR), final report under Section 173 of the Code of Criminal Procedure had been filed, the Magistrate would proceed in accordance with law and the writ petitions were dismissed.

2. We have heard Learned Counsel for the Appellants, the Private Respondent and Shri Prafull Bharat, Advocate who has assisted us at our request.

3. Private Respondent – Smt. Nikita Swarnkar is wife of Appellant No.1 – Pushpal Swarnkar. An unfortunate failed marriage led to institution of police reports by both sides against each other. At one stage the parties appeared to be arriving at a settlement. Considering that it was a

matrimonial matter, as Appellant No.1 and the Private Respondent were at the threshold of their lives, we considered it prudent to encourage the compromise settlement. Today, that appears to have failed. We therefore take up the matter for consideration on merits.

4. FIR No. 717 of 2008 was filed by the Private Respondent under Sections 294, 323, 341 and 506 IPC against the Appellants. After investigation, the police submitted a closure report on 30.6.2009 under Section 173 CrPC, which we are informed is pending consideration before the concerned Magistrate. To that extent, we find no infirmity in the impugned order dismissing Writ Petition (Cr) No. 3566 of 2010. The Magistrate is now required to hear the informant and then decide whether to accept the closure report or proceed in accordance with law.

5. The second FIR No. 35 of 2008 was lodged by the Private Respondent against the Appellants under Section 498-A/34 IPC read with Section 4 of the Dowry Prohibition Act. Prior to the impugned order charges had already been framed on 25.9.2008 and the prosecution evidence had also commenced. It does not appear that the Learned Single Judge was given proper assistance as this fact does not find any mention in the order. Nonetheless, in order to ensure justice, avoiding technicalities, we have examined the pleadings in the writ application also to satisfy ourselves if any grounds had been urged for quashing of the FIR itself, which is to be done only in exceptional circumstances. There are no pleadings in the writ application why the FIR ought to be quashed at the stage of investigation itself. Judicial precedents on this aspect abound and we do not consider it necessary to reiterate the same here. The memo of appeal unfortunately is no better and does not contain any grounds with regard to quashing of the FIR, even if it was over looked by inadvertence in the pleadings of the writ petition.

6. Once investigation has been completed, charge-sheet submitted, charges framed and prosecution evidence is going on, we are not persuaded to start a roving enquiry now for quashing of the FIR in absence of any specified grounds for challenge. We therefore find no reason to interfere with the impugned order insofar as Writ Petition (Cr) No. 5928 of 2010 is concerned also. This shall be without prejudice to the rights of the Appellants further in accordance with the provisions of the CrPC.

7. We express our thanks to Shri Prafull Bharat, Advocate for having rendered us valuable assistance in the matter.

8. It is expected that the final orders in both cases shall be passed expeditiously, provided the parties themselves cooperate.

9. The appeals are dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

