

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 441 of 2015**

Maanmati Singh, D/o Maya Ram, Caste Gond, Aged About 30 years, Occupation- Service, (Home Guard), R/o Village- Tejpur, P.S. and Tahsil- Ramanujganj, District- Surajpur, Civil and Revenue District- Surajpur, Chhattisgarh

---- **Petitioner**

Versus

1. The Superintendent of Police, Surajpur, District- Surajpur, Chhattisgarh
2. The Station House Officer, Police Station - Ramanujnagar, District- Surajpur, Chhattisgarh
3. Jairam Mandavi, Aged about 52 years, Town Inspector, R/o Rajput Lodge Surajpur, District- Surajpur, Chhattisgarh

---- **Respondents**

For Petitioner : Shri A.K. Prasad, Advocate

For Respondent/State : Ms. Farah Minhaj, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

24/07/2015

1. The instant petition is preferred to invoke extraordinary jurisdiction vested in this Court under Section 482 of CrPC *inter alia* alleging that petitioner was appointed as Home Guard on 01/10/2012 and is presently posted at District Commandant, Home Guard. The petitioner had lodged a complaint for registration of FIR before Superintendent of Police, Surajpur with the allegation that the respondent No. 3 Jairam Mandavi, who is Town Inspector of Ramanujnagar exploited her and committed rape by giving false promise of marriage. Thereafter, it is stated that

after the commission of offence the petitioner was abused and threatened. Consequently it led to filing a complaint to the Superintendent of Police on 21/07/2014 (Annexure P/2).

2. The report so made by Annexure P/2, wherein the seal and signature of the receipt in the office of Superintendent of Police, Surajpur is appended purports that on 21/07/2014 petitioner joined at Ramanujnagar Police Station, District Surajpur being as a Home Guard holding the Batch No. 380. In the said complaint the petitioner has alleged that after joining on 10/06/2014 Town Inspector Jairam Mandavi allured and gave a false assurance of marriage and other assurance to the petitioner to have physical relations. Subsequently she was physically exploited from 15/06/2014 to 25/06/2014 and thereafter the same state of affairs continued. Subsequent to it, it is stated, she was abused in public and before other people and therefore she made a complaint and prayed for justice to punish the culprit, respondent No. 3. It was further requested that the call details for ascertain period from 13/06/2014 to 15/06/2014 may be enquired, whereby it would disclose the relation of the petitioner and respondent No. 3.
3. When nothing transpired at the end of Superintendent of Police another application was moved to the Inspector General of Police, Surguja Division, making a complaint that despite report made to the Superintendent of Police, Surajpur, no action was taken and threat continued to be extended to the petitioner by the respondent No. 3. The said application was given to Inspector General of Police on 25/08/2014 (Annexure P/3). The petitioner further pleaded that in both the complaint no action was taken and thereafter the petitioner approached before the

trial Court and filed complaint under Section 200 of CrPC along with an application under Section 156(3) of CrPC for registration of FIR under Sections 376, 493 and 506 (B) of IPC and to investigate the matter against the accused. On such application having moved under Section 156 (3) of CrPC the concerned trial Court called a report from the Police Station. In response to it, report was submitted by the Police that on investigation no offence was found to be committed by the accused, therefore, neither cognizance was taken nor any crime was registered. Consequently, FIR was not registered against the accused persons.

4. The learned Magistrate taking cognizance of such report held that since the Police had already investigated the matter and nothing was found, consequently no order for registration of FIR under Section 156(3) can be ordered. The said order was subject of challenge before the Revisional Court, Surajpur on the ground that per se the order is illegal and cannot be sustained. It was alleged that the respondent No. 3 was in charge of the Police Station as SHO and therefore in colourable exercise of power, the FIR is not being registered. The said revision was also dismissed by the Court of Sessions Judge, Surajpur and it was directed the trial Court to proceed with the complaint filed under Section 200 of CrPC.
5. Shri A.K. Prasad, Advocate appearing on behalf of the petitioner would submit that irrespective of the fact of the complaint case filed before the Court below, the Police was under boundened duty under the provision of CrPC to register an FIR when commission of cognizable offence was brought to the notice of the Police. He contended that admittedly the report having been made to the Superintendent of Police, it cannot be

further passed on for enquiry in the manner which have been done. He would submit that under the provision of Section 154 of CrPC the Police has no option but to register the case on the basis of information and the police could not have embarked upon and fall back to their enquiry report and refuse to register FIR on the ground and presume that FIR was not genuine. He placed reliance in the case law reported in **2007 (1) MPHT 8 (SC) Lallan Chaudhary and Others vs. State of Bihar and another** and **2002(1) MPLJ Giridhari Lal Kanak vs. State of M.P. And other** and **2014(2) SCC 1 Lalita Kumari vs. Government of Uttar Pradesh and others** and prayed that the respondent No. 2 i.e. SHO Ramanujnagar may be directed to lodge an FIR as per complaint made by the petitioner.

6. Per contra, learned State counsel Ms. Farah Minhaz, would submit that the Police on their part after lodging the report has investigated the entire complaint and having found that no offence is made out, she further submits that departmental inquiry was conducted and is pending, therefore, it cannot be said that the State was a silent spectator. She relied on the inquiry report which is filed along with the return (Annexure-R/1) and would submit that in these circumstances no prejudice has been caused to the petitioner, in a result, the petition is liable to be dismissed.
7. To adjudicate the controversy between parties, the return filed by the State would be relevant. The State in its reply has attached an inquiry report dated 26/07/2014. The enquiry report is captioned as :-

“विषय—आवेदिका मानमति सिंह, महिला नगर सैनिक क्र. 380

ग्राम तेजपुर थाना रामानुजनगर के शिकायत पत्र की जांच कर
प्रतिवेदन भेजने बाबत”.

8. Therefore, filing of an complaint by the petitioner is an undisputed fact. Now reverting back to the complaint which is filed as Annexure P/2 dated 21/07/2014 and Annexure P/3 dated 25/08/2014 would show that Annexure P/2 is the letter addressed to the Superintendent of Police, Surajpur by the petitioner. Such complaint is against respondent No. 3, Jairam Mandavi. It purports that he had exploited the petitioner and physical relation were developed on the pretext of marriage which continued for certain period of time and subsequently the respondent No. 3 backed out. Thereafter since no action was taken by Superintendent of Police, another complaint was made to the Inspector General of Police, Ambikapur by Annexure P/3 naming the respondent No. 3, Jairam Mandavi that on the promise of marriage, the petitioner had been sexually exploited for a certain period of time for which request was made to take cognizance of offence. However, admittedly as per return of the State, no FIR was registered.
9. In order to appreciate the rival submission raised at bar it will be appropriate to quote Section 154(1) of CrPC, which governs the recording and registration for cognizance offence. The same is reads as under :-

“Section 154 of Code of Criminal Procedure -
Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and

be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf :

[Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 357D, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer :

Provided further that-

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of

sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

10. This fact cannot be side lined that, in the instant case, the allegations of rape were made by petitioner against her officer in-charge of the Police Station itself i.e. the respondent No. 3, the principal superior officer. Consequently, the submission made by the petitioner in the facts of the case that FIR was not recorded in the Police Station holds the sway in her favour. The reading of the report to the Superintendent of Police and the Inspector General of Police certainly make out a case of sexual exploitation of women in the organization by it's superior officer. It is an cognizable offence. However, whether such report is correct or not is a different consideration. The law is settled on the issue that when a report is made of cognizable offence then in such case the report can not be avoided to be registered as FIR. As has been held by the Hon'ble Supreme Court in case law reported in **2007 (1) MPHT 8 (SC) Lallan**

Chaudhary and Others vs. State of Bihar and another that Section 154 of CrPC cast a statutory duty upon Police Officer to register the case as disclosed in the complaint and then to proceed with the investigation. The mandate of Section 154 of CrPC is manifestly clear that if any information disclosing a cause of action is laid before an officer in charge of police station, such police officer has no other option except to register case on basis of such information. The genuineness or credibility of information cannot be considered for registration of FIR. The genuineness or credibility of the information is not a condition precedent for registration of a case. The Police Officer is under bounden duty to register the case on a complaint of cognizable offence by the citizen under Section 154 of the Code of CrPC.

11. The proposition of law was settled at rest long back by the Supreme Court in case of ***State of Haryana and Others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) SCC 335***. The Supreme Court has held at para 31 and 32 as under :-

“31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the

Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “*information*” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “*reasonable complaint*” and “*credible information*” are used. Evidently, the non-qualification of the word “information” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In

other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that '*every complaint or information*' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence."

12. The State in this case has contended that the departmental inquiry was conducted and the copy of the Departmental Enquiry report is placed on record. It is contended that on departmental enquiry no officer was found to have committed. As a fall out of such report as appears the State justifies it's action of not to register the FIR. The copy of such departmental enquiry is placed on record along with return of State. Reading of such report would show that it is almost in the form of

judgment of Sessions Court whereby the Police Officer has recorded a finding that the petitioner was consenting party to have relations with respondent consequently no offence is made out. The tenure of such departmental proceeding order is an order of acquittal of sessions Court.

13. This Court is of the considered opinion that such power of acquittal form passed by the Additional Superintendent of police was beyond its jurisdiction. In the facts of case simply the spirit of Section 154 of CrPC was to be complied that if a cognizable offence is disclosed, in report made, the FIR has to be registered and thereafter crime number has to be allotted. Needless to say that avoiding of registration of FIR cannot be allowed. The recent judgment of their Lordship's in the case of ***Lalita Kumari vs. Government of Uttar Pradesh and others, 2014(2) SCC 1*** has settled down the proposition and the procedure to be followed in the case of report is made of cognizable offence. The relevant part is reproduced hereunder :-

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration

of FIR , such as, whether the information is falsely given, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

14. Therefore, by application of the aforesaid principles, the reading of the complaint, it reveals that complaint certainly disclosed a cognizable offence. Therefore, the Police is required to register the FIR and investigate the matter. The credibility of the information whether it is correct or false cannot be done by way of Departmental enquiry and an order of acquittal can be passed by usurping the jurisdiction of Court . In view of the discussions held in the preceding paras, it is directed that respondents No. 1 & 2 shall register the FIR on the complaint made by the petitioner by complaint dated 21/07/2014 and thereafter shall give the crime number and proceed to deal with the same in accordance with procedure laid down in the code.
15. In the result, the petition stands allowed to the above extent indicated here in above.

Sd/-

(Goutam Bhaduri)
Judge

