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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr) No. 9 of 2016**

Bhushan Singh Rathia S/o Late Shri Dilip Singh Rathia, aged about 49 years,
R/o village Laat, Post Chhal, Thana Chhal, Tahsil Dharamjaygarh, Civil and
REvenue District Raigarh (Chhattisgarh)

---- **Petitioner****Versus**

- 1.State of Chhattisgarh Through the Secretary, Home Department, Mantralaya,
Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
- 2.Superintendent of Police, Raigarh, District Raigarh, Chhattisgarh.
- 3.Station House Officer, Police Station Chhal, Tahsil Dharamjaygarh, District
Raigarh, Chhattisgarh.
- 4.The General Manager, South Eastern Coalfields Limited, Raigarh Area, District
Raigarh, Chhattisgarh.
- 5.The Regional Manager, Raigarh Region South Eastern Coalfields Limited,
Raigarh Area, Raigarh, District Raigarh, Chhattisgarh.
- 6.Mantori Bai W/o Shri Roop Singh Rathia, Aged about 45 years, R/o village
Laat, Post Chhal, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue
District Raigarh, Chhattisgarh.
- 7.Ramkumar S/o Sukhlal Rathia, aged about 42 years, R/o village and Post
Bojiya, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue District Raigarh,
Chhattisgarh.
- 8.Omprakash S/o Sahasram, aged about 27 years, R/o village & Post
Chandrashekharapur, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue
District Raigarh, Chhattisgarh.
- 9.Umesh Singh S/o Sahasram aged about 24 years, R/o village and Post
Chandrashekharapur, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue
District Raigarh, Chhattisgarh.
10. Rajkumar S/o Sidar Singh, aged about 27 years, R/o village and Post
Chandrashekharapur, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue
District Raigarh, Chhattisgarh.

11. Mahendra Kumar S/o Phulsingh, aged about 35 years, R/o village and P ost Chandrashekharapur, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue District Raigarh, Chhattisgarh.
12. Jitendra Kumar S/o Phulsingh, aged about 29 years, R/o village & Post Chandrashekharapur, Thana Chhal, Tahsil Dharamjaygarh, Civil and Revenue District Raigarh, Chhattisgarh.

---- Respondents

For Petitioner : Smt. Smita Ghai and Ms. Madhunisha Singh, Advocates.
 For Respondent/State : Shri A.S.Kachhwaha, Additional Advocate General and Shri S.M.Ali, Advocate.
 For Respondent/SECL : Dr. N.K.Shukla, Senior Advocate with Shri Shailendra Shukla.
 For Respondents 6 to 12: Shri Roshan Dubey, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

26/08/2016

1. The main prayer made by Petitioner in this petition is as follows:

"10.1 That, this Hon'ble Court may kindly be pleased to issue an appropriate writ and may kindly be pleased to direct the respondent no. 2 and 3 to register the FIR against the respondent no. 4 to 12 on the basis of complaint dated 22.6.2015 submitted by the petitioner which prima facie discloses the commission of a cognizable offence."

2. The facts, necessary for disposal of this case are that the Petitioner claims that he is entitled to be granted employment by the Respondent-South Eastern Coalfields Limited (for short 'the SECL') as per the rehabilitation policy because some land of the Petitioner was acquired by the SECL. It is the case of the Petitioner that a forged consent letter of the father of the Petitioner was obtained by Respondents No. 7 to 12 and on the basis of the said forged letter of consent, Respondents No. 7 to 12 have obtained employment in the SECL whereas the Petitioner was entitled to employment. It is also alleged that Respondent No. 6 was a part of this conspiracy since she is a witness to this forgery.

3. The Petitioner filed a complaint with the Officer-in-Charge of the Police Station, Chhal, District Raigarh in which he made allegations that he is a handicapped person but has not been given employment under the rehabilitation policy. He also claimed that the Respondent No. 7 to 12 have been granted employment by forging a consent letter of his father and the Respondent No. 6 acted as a witness for preparation of the said forged authorization letter. According to him, the so called consent letter is neither signed by his father-Dilip Singh Rathiya nor by him. He therefore prayed that action be taken. When no action was taken, then the Petitioner filed the present writ petition.

4. The reply on behalf of the State was filed on the affidavit of Shri Ashok Vadegaonkar, the Officer-in-Charge of the Police Station, Chhal who also happens to be the Sub Divisional Officer (Police) of District Raigarh. In this reply, he stated as follows:

"3. That, the answering respondent/State most respectfully submitted that, the respondents taking proper action as per law and procedure. The respondent no. 3 especially investigated the matter in kind direction of respondent no. 2 and during investigation he recorded the statements of concerning parties and after perusal of the records it disclosed that the petitioner is a Sikha Karmi and his wife is Sarpanch of the village - Lat where the respondent SECL acquires the land for coal mines of villagers alongwith the petitioner and compensation with land at Rehabilitation village was given to the Petitioner where the petitioner built a new house and residing there but he did not release his house and not gave possession to the SECL authorities and obstructed to further mining extension work.

4. That the answering respondent/State submits that the petitioner continuously obstructed the development of the proposed SECL mining project which is reason of huge financial loss to State and Central Government as SECL is a Government under taking company and therefore there is no material in impugned complaint."

5. When this matter came up before this Court on 22.07.2016, I had felt that the reply filed by Shri Vadegaonkar is not at all a proper reply. In reply, it was stated that Shri Vadegaonkar had investigated the matter on the directions of the Superintendent of Police, Raigarh and during said investigation, he recorded the

statement of the concerned parties. He further stated that the Petitioner is a Shiksha Karmi and his wife is a Sarpanch. He also stated that the Petitioner has built a new house but he is not leaving his old house and giving possession to the Respondent-SECL. He also stated that the Petitioner is obstructing the mining extension work. In para 4, he again repeated that the Petitioner is continuously obstructing development of proposed mining project of the SECL which is causing huge financial loss to the State and the Central Government.

6. The aforesaid reply, to say the least, is most shocking. The Officer-in-Charge of the Police Station is the officer of the Chhattisgarh State Police Service. He is not an employee of the SECL but his affidavit is such as if he is filing the same at the behest of the SECL. He had to answer the question why he had not lodged the FIR. He gave no answer to the same but started criticizing the functioning of the Petitioner with regard to blocking the work of the SECL. In case, the Petitioner indulges in any illegal activity, the Police is free to take action but merely because the Petitioner is opposing the SECL, is no ground to not even consider his complaint.

7. Shri Vadegaonkar appeared before this Court on 05.08.2016. This Court asked him to produce any record with regard to the investigation but he could not produce any record at all. No FIR has been recorded. Under the Code of Criminal Procedure, 1973 (for short 'the CrPC') the Police Officer can start investigating a matter only when the FIR is lodged. Normally, unless the FIR is recorded, there can be no investigation. Another very serious aspect of the matter is that the Police Officer has not lodged the FIR. It is not the discretion of the Police Officer whether to lodge the FIR or not. If a complaint *prima facie* discloses commission of a cognizable offence, FIR has to be lodged and a copy of the FIR has to be sent to the Magistrate and thereafter, the investigation starts. In this regard, reference to Section 154 CrPC reads as follows:

"154. 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 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 354D, section 376, section 376A, section 376B, section 376C, 376D, section 376E or section 509 of the Indian Penal Code 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 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 video graphed;

(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."

8. A bare reading of the aforesaid Section clearly stipulates that when an information relating to the commission of a cognizable offence is given to the Police Officer orally, he shall reduce the same in writing and when the information is given in writing, the substance thereof has to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Under sub-section (2), a copy of the information recorded under sub-section (1) shall be given forthwith free of cost to the informant. Sub-section (3) provides that if any person is aggrieved by refusal on the part of the officer to record the information, he may send the substance of such complaint in writing and by post to the Superintendent of Police concerned, who on being 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. This virtually means that the Investigating Officer shall be an officer other than the officer who refused to lodge the FIR.

9. Section 157 CrPC reads as follows:

"Procedure for investigation.-(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot:
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

[provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

- (2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

This Section clearly postulates that FIR has to be sent forthwith to the Magistrate. The Magistrate is empowered to take cognizance of such offence and investigation has to be started.

10. Section 154 CrPC has been the subject matter of discussion in a number of judgments of the Apex Court and when the Apex Court has already given directions in this regard, this Court is not required to add anything further. Reference may be made to *Lalita Kumari v. Government of Uttar Pradesh & Others* {(2014) 2 SCC 1} wherein the Apex Court held as follows:

"**40.** In addition, Mr. Shekhar Naphade, learned senior counsel contended that insertion of Section 166A in IPC indicates that registration of FIR is not compulsory for all offences other than what is specified in the said Section. By Criminal Law (Amendment) Act 2013, Section 166A was inserted in Indian Penal Code which reads as under:-

“Section 166A—Whoever, being a public servant.—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under subsection (1) of Section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under Section 326A, Section 326B, Section 354, Section 354B, Section 370, Section 370A, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E, Section 509

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and shall also be liable to fine.”

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42. Although, the argument is as persuasive as it appears, yet, we doubt whether such a presumption can be drawn in contravention to the unambiguous words employed in the said provision. Hence, insertion of Section 166A in the IPC vide Criminal Law (Amendment) Act 2013, must be read in consonance with the provision and not contrary to it. The insertion of Section 166A was in the light of recent unfortunate occurrence of offences against women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country,

thought it appropriate to expressly punish the police officers for their failure to register FIRs in these cases. No other meaning than this can be assigned to for the insertion of the same.

43. With this background, let us discuss the submissions in the light of various decisions both in favour and against the referred issue.

Interpretation of Section 154:

44. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

45. At this juncture, it is apposite to refer to the following observations of this Court in *M/s Hiralal Rattanlal*¹⁴ which are as under: (SCC p. 224, para 22)

“22...In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear...”

46. The above decision was followed by this Court in *B. Premanand*¹³ and after referring the abovesaid observations in the case of *Hiralal Rattanlal*¹⁴ this Court observed as under:

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. SEBI*⁴³.”

110. This can also be seen from the fact that Section 151 of the Code allows a police officer to arrest a person, even before the commission of a cognizable offence, in order to prevent the commission of that offence, if it cannot be prevented otherwise. Such preventive arrests can be valid for 24 hours. However, a Maharashtra State amendment to Section 151 allows the custody of a person in that State even for up to a period of 30 days (with the order of the Judicial Magistrate) even before a cognizable offence is committed in order to prevent commission of such offence. Thus, the arrest of a person and registration of FIR are not directly and/or irreversibly linked and they are entirely different concepts operating

under entirely different parameters. On the other hand, if a police officer misuses his power of arrest, he can be tried and punished under Section 166.

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a 'reason to suspect the commission of an offence'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

11. All these directions have already been ordered to be circulated by the Apex Court. These have been circulated to the police officials of the State of Chhattisgarh already and even at the cost of repetition, if needed, they shall be circulated all over again.

12. Recording of an FIR is necessary as soon as a cognizable offence is disclosed. The police official has no jurisdiction whatsoever to make an entry only in the G.D. entry register and not record an FIR. Directions are hereby given to all police officials in the State that in case they do not record an FIR when they come to know of a cognizable offence, then serious disciplinary action shall be taken against them and if necessary, action under the Contempt of Courts Act shall also be taken against them for violating the judgment of the Apex Court and of this Court.

13. Copy of this judgment shall be sent to the Chief Secretary and the Director General of Police who are directed to ensure that these instructions are followed in letter and spirit. It shall be the duty of the Superintendent of Police to check the G.D. Registers of all the police stations falling in their jurisdiction and if it is found that FIRs are not being registered then action should be taken against the erring officials. If that is not done, then this Court shall not hesitate to take action against

the senior police officials who are negligent in the performance at their duties.

14. The time has come when we must take advantage of the latest technology. Therefore, a direction is given to the Director General of Police to ensure that within 12 (twelve) weeks from today a scheme is prepared whereby FIR can be lodged by SMS or by Email. All police stations of the police post in the State should display a permanent Mobile Number and Email address on which address the information of a commission of an offence can be sent and this information can also be treated as an FIR if it discloses the commission of a cognizable offence.

15. This Court is not going into merits of the allegations made by the Petitioner. It is for the Police Officer to investigate the case and if he finds substance recommend prosecution against the person and if he finds that there is no evidence of forgery, he can file a report under Section 173 CrPC for closure of the case. In such closure, permission of the Magistrate is required and the police official cannot usurp the powers of a Magistrate by itself not recording the FIR which would mean that they are themselves deciding that in which case FIR has to be recorded and in which case, FIR is not to be recorded.

16. As far as the present case is concerned, as per the allegations of the complainant/Petitioner, the consent letter of his father has been forged which discloses commission of a cognizable offence. Therefore, FIR had to be registered and the Police Officer had no discretion not to register the FIR. It is only where the case falls under exception as mentioned by the Apex Court in *Lalita Kumari* (supra) that the police may refrain from recording the FIR till some preliminary investigation is complete, otherwise, it is bound to register the FIR.

17. In view of above, the writ petition is allowed. The Officer-in-Charge of the Police Station concerned is directed to lodge the FIR. The Superintendent of Police, Raigarh is directed to hand over the investigation to an officer senior to

Shri Ashok Vadegaonkar and shall ensure that the investigation is not conducted by Shri Vadegaonkar. It may be clarified that this Court has not gone into the merits of the case and anything stated in this judgment should be taken to be validation of what has been written in the complaint. That complaint must be investigated by the Police on its own merits and thereafter, a report be filed under Section 173 CrPC within the time prescribed.

18. The Registrar General is directed to send a copy of this order to the Secretary, Home Affairs, Government of Chhattisgarh and the Director General of Police, Chhattisgarh who will ensure that the directions given in *Lalita Kumari (supra)* case are again circulated to all the police officials in the State of Chhattisgarh and an affidavit shall be filed by the Secretary, Home as well as the Director General of Police within a period of four weeks from today that they have complied with the directions issued by this Court.

19. It is also made clear that in future, if any case comes to this Court where it is found that any official has violated the directions given by the Apex Court or by this Court, then this Court may not only recommend disciplinary action against the said official but shall also initiate proceedings under the Contempt of Courts Act.

20. With the aforesaid observations and directions, this petition is disposed of.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE