

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 143 of 2016

1. Dulin Bai Wd/o Prabhu, aged about 69 years, R/o Village Semra, P.S. Bhakhara, Distt. Dhamtari Chhattisgarh.
2. Savitri Bai D/o Prabhuram Sinha, aged about 50 years, R/o Village Arjuni, Distt. Dhamtari Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh through District Magistrate Dhamtari, Distt. Dhamtari Chhattisgarh.
2. Dinesh Kumar S/o Late Prabhu Sinha R/o Village Semra, P.S. Bhakhara, Distt. Dhamtari Chhattisgarh.
3. Phool Bai D/o Late Prabhu Sinha R/o Village Semra, P.S. Bhakhara, Distt. Dhamtari Chhattisgarh.
4. Lachani Bai Wd/o Late Prabhu Sinha R/o Village Semra, P.S. Bhakhara, Distt. Dhamtari Chhattisgarh.

---- Respondents

For Petitioners – Mr. Vivek Tripathi, Advocate.

For Respondent No.1 – Ms. M.Asha, Panel Lawyer on advance notice.

For Respondents 2 to 4 – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

02/02/2016

1. Heard on admission.
2. Brief facts of as per the instant Cr.M.P. are that before the Chief Judicial Magistrate, Dhamtari, C.G. the petitioners had filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 (in short 'the Code') with a prayer to direct the police officer to investigate as the matter is a cognizable one. After hearing, the concerned Magistrate vide order dated 09-09-2014 held that after perusal of the entire facts, it is not proper to direct the police officer to investigate the matter. Hence, the learned Magistrate dismissed the application filed under Section 156(3) of the Code; against which the present petitioners had preferred a criminal revision before the Additional Sessions Judge (FTC) Dhamtari, C.G. The Additional Sessions Judge (FTC) Dhamtari, C.G. vide order

dated 26-09-2015 in Criminal Revision No.37/14 held that as there is no illegality or impropriety in the order passed by the Magistrate, there is no scope for interference and thereby affirmed the order passed the Chief Judicial Magistrate. Against the said orders, the petitioners have preferred the instant Cr.M.P. invoking the inherent jurisdiction of this Court under Section 482 of the Code praying that the orders passed by the both the Courts below be set aside and the trial Court kindly be directed to act according to the provision of law and register a criminal case.

3. Learned counsel for the petitioners submits that on the basis of the grounds mentioned in the instant Cr.M.P., the petition may be allowed and the orders passed by both the Courts below may be set aside and the Magistrate be directed to register the criminal case against the respondent culprit.

4. For the purposes of appreciation regarding admission, the petition, the orders passed by the Court below and other documents are perused.

5. Section 156 of the Code reads as under :

“Police officer's power to investigate cognizable case. – (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

6. From the perusal of sub-section 3 of Section 156 of the Code, Magistrate is empowered under Section 190 of the Code for such investigation as mentioned in sub-section (1) and sub-section (2). Here, the word 'may' is regarding discretion of the concerned Magistrate to appreciate the matter and if he finds he may order for such investigation by the police officer.

7. In the order passed by the concerned Magistrate dated 09-09-2014 and also the order passed by the Sessions Judge dated 26-09-2015 the petitioner

failed to show and demonstrate as to what kind of illegality or impropriety committed by both the Courts below. After due appreciation, the concerned Magistrate held it proper to not to direct the police officer for investigation of alleged cognizable material under the provisions of Section 156 of the Code. I do not see any illegality or impropriety or arbitrariness in the orders passed by both the Courts below. Even otherwise, the petitioners failed to demonstrate or show any provision of law which debars him to file a complaint case under the Chapter XV of the Code.

8. On due consideration, the instant Cr.M.P. has no substance and is not maintainable at the motion stage itself. Consequently, the same is hereby dismissed.

9. The petition dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE