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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1854 of 2016**

1. Smt. Amarbati Markam W/o Baliram Markam, Aged About 40 Years Farmer Sarpanch Of Grampanchayat Barkai, Aged About 40 Years R/o Grampanchayat Barkai, Tahsil Makdi, P. S. Farsgaon District Kondagaon (Chhattisgarh)
2. Smt. Shanti Bai Markam, W/o Madho Markam, Secretary Grampanchayat Barkai, R/o Grampanchayat Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)

**---- Petitioners****Versus**

1. State Of Chhattisgarh Through Secretary Panchayat Department New Mantralaya, Mahanadi Bhawan, Raipur (Chhattisgarh)
2. Collector, Kondagaon, District Kondagaon Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Makdi, Chhattisgarh.
4. Chamra Ram Baghel S/o Halal R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)
5. Tulshi Prasad Pande, S/o Sonuram, R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)
6. Sulendra Singh S/o Sonuram, R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)
7. Lalsay S/o Jhitku R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)
8. Smt. Yashomati W/o Shravan R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)
9. Smt. Siyabai Markam W/o Sonadhar R/o Gram Barkai, Tahsil Makdi P. S. Farsgaon District Kondagaon (Chhattisgarh)

**---- Respondents**


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| For Petitioners                   | : | Shri Rajesh Jain, Advocate.                   |
| For Respondents No.1 to 3/State : |   | Shri Ramakant Mishra, Deputy Advocate General |

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**Hon'ble Shri Justice Prashant Kumar Mishra****Order On Board**

**25/07/2016**

Petitioner No.1 is the former Sarpanch of Gram Panchayat Barkat whereas petitioner No.2 is the Secretary of the said Gram Panchayat. They are aggrieved by the order passed by the Additional Collector, Kondagaon on 23.08.2014 and the revisional order dated 21.06.2016 passed by the Commissioner, Bastar Division.

2. On a complaint being made by the villagers, show-cause notice was issued to the petitioners and thereafter the order Annexure P/1 has been passed wherein the Additional Collector has recorded a finding that the petitioners have embezzled the amount sanctioned to the Gram Panchayat for construction of 480 numbers of toilets, additional room and kitchen shed in the Sadakpara Primary School, Middle School Nalajhar and additional room at Bandhapara Primary School. These works have either not completed or not started. The Collector has *prima facie* concluded that the petitioners have committed embezzlement, therefore, direction for lodging F.I.R. as well as for initiation of proceedings under Section 40 and 92 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam') for removal from Office and for recovery of the amount has been recommended.

3. Learned counsel for the petitioners would submit, the petitioners have not been afforded proper opportunity of hearing by the Additional Collector. He would submit that the proceedings under Section 40 & 92 of the Adhiniyam are required to be initiated by the S.D.O. (Revenue), Kondagaon, who is an authority subordinate to the Additional Collector, therefore, the fate of those proceedings are sealed against the petitioners and thus there is violation of principles of natural justice.

4. In ***Union of India and another vs. W.N.Chadha, AIR 1993 SC 1082***, it has been held by the Supreme Court that there is no right in favour of a prospective accused of prior opportunity of hearing before lodging the F.I.R., therefore, the contention that before directing lodging F.I.R., the petitioners should have been properly heard is not legally sustainable. Even otherwise, para – 2 of the order Annexure P/1 would

demonstrate that both the petitioners were noticed and their statements were recorded by the Additional Collector. Therefore, on facts also it is not established that there is any violation of principles of natural justice.

5. In so far as the proceedings under Section 40 & 92 of the Adhiniyam are concerned, it is directed that as and when such proceedings are initiated, the Prescribed Authority, i.e., S.D.O. (Revenue), Kondagaon shall afford proper opportunity of hearing to the petitioners. While deciding the proceedings, the S.D.O. (Revenue) shall not be influenced by the findings recorded by the Additional Collector, Kondagaon.

6. With the aforesaid direction, petition stands disposed of accordingly.

Sd/-  
Judge  
(**Prashant Kumar Mishra**)