

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION No. 618 of 2016**

1. N .K. Rathi S/o Late Netrapal Singh Aged About 70 Years (Ex-Armyman)
President R/o Qtr. No. 4/d, Street No. 70, Sector - 6, P.S. Kotwali, Bhilai Nagar,
District Durg Chhattisgarh
2. Reshma Rani D/o N. K. Rathi Aged About 37 Years R/o Qtr. No. 4/ D, Street
No. 70, Sector -6, P.S. Kotwali, Bhilai Nagar, District Durg Chhattisgarh,
(President) Ex-Serviceman Welfare Society Bhilai & Q. No. 200 Link Road
Jalebi Chwok Camp-2, Bhilai, Tahsil & District Durg Chhattisgarh

---- Petitioner**Versus**

1. J. M. Willium S/o Late F. Willium Aged About 58 Years R/o Street No. 25,
House No. 1267, Shanti Nagar, P.O. Supela, Bhilai, District Durg Chhattisgarh
2. Dinesh Jha S/o Late Sitaram Aged About 69 Years (Senior Member) And
President, Regional Ex-Serviceman Welfare Association Bhilai, R/o Of Street
No. 25, House No. 1267, Shanti Nagar, P.O. Supela, Bhilai, District Durg
Chhattisgarh
3. State Of Chhattisgarh Through The Collector, Durg, District Durg Chhattisgarh

---- Respondents

For Petitioners	:	Shri Uttam Pandey, Advocate.
For Respondent/State	:	Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****08/07/2016**

1. The present petition under Section 397 read with Section 401 of Cr.P.C.
has been preferred against the order dated 27.04.2015 whereby the

Judicial Magistrate First Class, Durg in Complaint Case No.322012/2015 has registered an offence against the applicants.

2. Facts in brief are that on a complaint initiated by the respondents No.1&2 against the applicants, the court below got it investigated by the police authorities who found the commission of offence to be proved after recording evidence of complainants at the time of registration of complaint. Based on the said evidence that has come before it, the court below vide order dated 27.04.2015 has registered a complaint case against the applicants for the offence under Sections 467,468,471,420 and 120-B IPC.
3. Learned counsel appearing for the applicants submits that the said registration of the complaint by the JMFC is bad in law on the ground that it has not been properly instituted. The Magistrate should not have entertained the complaint as the same was filed in violation of the provisions of Chhattisgarh Society Registrkaran Adhiniyam, 1973 (for short, the Adhiniyam, 1973).
4. Assailing the impugned order, learned counsel for the applicants submits that the said complaint could not have been lodged by the respondents No.1&2, rather it could have only been initiated at the instance of the Registrar, Firms and Societies. Section 37 of the Adhiniyam, 1973 clearly deals with how an offence have to be registered and it says that no court shall take cognizance of an offence punishable under this Adhiniyam except upon a complaint made by the Registrar or any other persons, authorized in writing by him, in this behalf.

5. Relying upon the said provision of law, it was further submitted that nature of allegations levelled against the applicants clearly shows that these are all allegations arising of the functioning of the society, and therefore, in case if there is any violation of the bye-laws of the society or the functioning of the society, it is only the Registrar who is competent to lodge complaint and nobody else. Therefore, the cognizance taken by the court below at the instance of respondents No.1&2 is per se illegal and without jurisdiction and therefore, the same deserves to be set aside/quashed.
6. However, the State counsel opposes the petition on the ground that the nature of allegations levelled against the applicants is an act which would be an offence under the provisions of the Indian Penal Code, and therefore, the complaint which is lodged before the court below drawing attention to the crime committed by the applicants, it cannot be said that JMFC was not authorized to order registration of the offence at the instance of a private complainant other than the Registrar.
7. Having considered the contentions put forth by the parties and on perusal of record particularly the order dated 27.04.2015, it clearly reflects that broad allegations against the applicants was that on the basis of fake disability certificate he had got himself allotted two Fair Price Shops in the name of applicant No.2. Likewise, again it is alleged that they had committed large scale of irregularities by illegally distributing the food grains to the consumers. Further, there are also allegations against the applicants that they put their own signatures in place of consumers signatures in the register maintained by the society. These all acts on the

part of the applicants shows illegality on their part.

8. The very allegation of the applicants in using fake documents for getting allotment of Fair Price Shop cannot be said an offence only under the provisions of Adhiniyam, 1973. Rather it will also prima-facie come within the ambit of offence under Sections 467,468 and 471 IPC for which the private complainant was competent to lodge a complaint and further the JMFC is justified in taking cognizance. The complaint case lodged was specifically in this regard by the respondents No.1&2 in the present case and which has been scrutinized by the JMFC while registering the complaint case.
9. So far as the contention of the applicants that offence is of one under Section 37 of the Adhiniyam, 1973 is concerned, it is made clear that the offence committed while functioning/running the society can be said to be an offence under the provisions of the Adhiniyam,1973 which could only be registered at the instance of Registrar, whereas, in the instant case it is not an illegality or act committed in the course of functioning of the society alone, but it is also a case where the inception of the Fair Price Shop itself is by using fake documents, which for all practicable purpose would also be an offence under Indian Penal Code and which can be taken note by the JMFC having jurisdiction over the said area on a complaint filed by the private complainant.
10. Thus, from the allegations which have been made against the petitioners, it is specific that the allegations are also in the nature of a criminal offence under the Indian Penal Code and therefore, it cannot be said that

for the act of criminal offence as alleged, the JMFC could not have entertained a complaint case.

11. This is not a case where the offence alleged is only an offence exclusively under the Adhiniyam, 1973, but they are also offences which are offences under the Indian Penal Code and therefore, the private complainant is competent to lodge complaint. Thus, in the opinion of this court, no good case is made out for interference with the order passed by the court below.

12. Accordingly, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge