

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 407 of 2016**

1. Smt. Anita Sahu W/o Ramesh Kumar Aged About 35 Years R/o Village Bhadesar, P.S. Janjgir, District Janjgir Champa, Chhattisgarh.
2. Smt. Mela Bai W/o Rampyare Aged About 37 Years R/o Village Pondi, P.S. Navagarh, District Janjgir Champa, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Station House Office, Police Station Navagarh, District Janjgir Champa, Chhattisgarh.
2. Prakash @ Chandra Prakash Sahu S/o Panchram Aged About 18 Years R/o Village Pondi, P.S. Navagarh, District Janjgir Champa, Chhattisgarh.

---- Respondents

For Petitioners:	N.K. Chatterjee, Advocate
For Respondent No.1/State:	Mr. Vaibhav A. Goverdhan, Panel Lawyer
For Respondent No. 2	Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01.08.2016**

1. The present Cr.M.P. has been preferred assailing the order dated 08.03.2016 passed in Criminal Revision No. 72/2015 by First Additional Sessions Judge, Janjgir, District – Janjgir-Champa whereby the Revisional Court has after setting aside the order dated 24.06.2015 passed by the Judicial Magistrate First Class, Navagarh, District – Janjgir-Champa in Criminal Case No. 195/2015 remitted back the matter for considering the complaint of Respondent No.2 on its merit and to verify whether the ingredients of the offence as alleged by the complainant makes out a case for the offence under Sections 420, 467, 468, and 471 IPC or not and then pass an appropriate order.

2. Learned Counsel for the Petitioners assailing the said order submits that the said order passed by the Court below is per se illegal and bad-in-law and without proper appreciation of the documents which were produced by the Petitioner before the Magistrate Court.

3. Learned Counsel for the Petitioners further submits that the Judicial Magistrate First Class, Navagarh had passed an order on 24.06.2015. He has taken into consideration the statements which were recorded at the time of the registration of the complaint, also taking into consideration the submissions made in the complaint filed by the Respondent No. 2, reached to the conclusion that since the dispute appears to be more of civil in nature and for which Respondent No.2 had already filed a civil suit before the same Court, therefore a criminal case could not have been registered at this point of time and therefore rejected the same and rightly done so, therefore, it could not have been interfered by the Revisional Court.

4. Learned Counsel for the Petitioners further submits that the Revisional Court has committed an error of law to the extent of not considering the fact that the statement of the complainant and the other witnesses whose statements have been recorded at the time of registration of the complaint does not reflect the criminal offence against the present Petitioners and further the finding of the Judicial Magistrate that the complaint being of civil in nature and for which Respondent No.2 has already exercised the right available to him by the civil suit which is already pending therefore the Revisional Court should not have remitted the matter back to the Magistrate Court.

5. Having considered the submissions put forth by the Counsel for the parties and also on perusal of the record, an admitted position is that, the Respondent No. 2 in the present case though was a minor at the relevant point of time, he was just short of attaining the age of majority. It can not be said that he was not able to understand the things properly to decide what was good and what was not good in his favour at that period of time. Another aspect which has to be borne in mind is that there was a categorical submission made by the complainant in his complaint as well as in his statement stating that he had also along with the other witnesses had gone to the office of the Patwari and objected for his property to be sold without his consent and knowledge by the present Petitioner, who is the step-sister of the complainant and was being projected as his guardian. The said objection was also taken note by the Patwari who also ordered that it would not be permitted to be sold without his consent, inspite of this the Petitioner said to have got the property sold in favour of one Mela Bai in connivance with the other co-accused. On perusal of the record and order sheet dated 24.06.2015 it would clearly reflect that the Magistrate has not appreciated the facts whether any criminal intention or criminal offence is made out against the Petitioner which has been alleged in the complaint. The Court below perhaps has rejected the complaint only on the ground that Respondent No.2 has filed a civil suit which was pending before the same Court. Merely because of the pendency of the civil suit by itself would not wipe criminality on the part of an act by accused persons. The Magistrate ought to have appreciated the nature of the averments made in the complaint and should have properly

considered the act played by the alleged accused persons.

7. The Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander and Another**¹ in paragraphs 26 and 27 has laid down the principles reproduced as below:

“26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In *Indian Oil Corporation v. NEPC Indian Ltd.*² This Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties are pending.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

1 (2012) 9 SCC 460

2 (2006) 6 SCC 736

8. Considering the principle laid down by the Supreme Court in the said case, in the opinion of the Court, the Revisional Court has not committed an error of law in remitting back the matter with a direction to the Magistrate to register the complaint and proceed further.

9. Accordingly, the present Cr.M.P. being devoid of merit, the same is rejected.

Sd/-
(P. Sam Koshy)
JUDGE