

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 886 of 2015

1. Jitendra Banjara S/o Brijlal Banjara Aged About 30 Years R/o Village Chilfi Police Station Lormi, District Mungeli Chhattisgarh.
2. Brijlal Banjara S/o Kartik Ram Banjara Aged About 54 Years R/o Village Chilfi Police Station Lormi, District Mungeli Chhattisgarh.
3. Nrendra Banjara S/o Bansilal Banjara Aged About 29 Years R/o Village Chilfi Police Station Lormi, District Mungeli Chhattisgarh.
4. Shanbhu Sahu S/o Rajaram Sahu Aged About 32 Years R/o Village Ghuthera Navagaon, Police Station Lormi District Mungeli Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Police Station Lormi District Mungeli Chhattisgarh.
2. Vijay Patle S/o Premdas Patle Aged About 65 Years R/o Village Navagaon Dayali, Police Station Lormi District Mungeli Chhattisgarh.

---- Respondents

For Petitioners	:	Shri U.N. Awashty, Sr. Advocate with Shri K.K. Dewangan, Advocate
For Respondent No.1/State	:	Smt. M. Asha, Panel Lawyer
For Respondent No.2	:	Shri Hemant Kesharwani, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

14/03/2016

1. With the consent of the parties heard the matter finally at the motion stage.
2. On behalf of respondent 2 it is submitted that they do not want to file written response in the matter and also they had no objection if the instant Cr.M.P. is heard finally.
3. On behalf of the State/ respondent 1, reply has been filed along with the annexed documents. As per the documents annexed, the Superintendent of Police directed the S.H.O. Lormi for sending closure report to the Court as required under the law. On the basis of the report as no offence is made out closure report may be

prepared under the provisions of Section 169 of the Code of Criminal Procedure, 1973 (for short the Code).

4. Facts in brief are that Lormi Police had filed a registered FIR, Annexure P/1 under Sections 420, 294, 506/34 IPC against 4 accused persons and investigated the same. But till date no charge sheet has been filed under Section 173 of the Code before the Criminal Court and no proceeding required under the law is pending before the Criminal Court.

5. Against registration of FIR No.132/2011 the present petitioners had filed the instant Cr.M.P. wherein it is prayed that the dispute was of civil nature. To initiate any proceeding it shall be the abuse of process of law, hence, the petition may be allowed invoking jurisdiction under Section 482 of the Code and quash the FIR and consequential proceedings in the interest of justice.

6. Heard learned counsel for the parties and perused the material annexed along with the instant Cr.M.P., reply filed in this behalf by respondent 1/State and also the documents annexed on behalf of the State.

7. Learned counsel for the petitioners submits that as per facts of the case, the dispute is of a civil nature. Respondent 2 also before the investigating agency informed that as the dispute is in relation to civil nature, they do not intend for any criminal proceedings, hence, the FIR registered by the Police under Sections 420, 294, 506/34 IPC may be quashed.

8. Learned counsel for the petitioners placed reliance on 2015 (1) CGLJ 437 (Vikas Kumar Agrawal Vs. State of C.G. & Others) wherein the coordinate Bench of this Court held that as the offence is compoundable, FIR registered against the petitioners for the offence under Section 420 IPC as well as the consequential proceedings stand quashed. Further reliance is placed on 1994 SC 853 (S.P. Chengalvaraya Naidu (dead) by LRs. Vs. Jagannath (dead) by Lrs. & others.) wherein the Hon'ble Apex Court held that Proceeding in court- Fraud by litigant-

Withholding of vital document relevant to litigation- It is fraud on Court - Guilty party is liable to be thrown out at any stage- Litigant obtaining preliminary decree for partition of property- Not mentioning at trial as to his having executed before filing of suit release deed in respect of property in favour of his employer - Decree is vitiated by fraud. Further reliance is placed on AIR 2004 SC 4676 (Adalat Prasad Vs. Rooplal Jindal & Ors), wherein at para 15 it is held as under :

“15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that is not by invoking section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal Courts, the remedy lies in invoking Section 482 of Code.”

9. It is submitted on behalf of the petitioners that any further proceeding shall be the abuse of process of law and the FIR and other consequential proceedings may be quashed.

10. On behalf of respondent 1 it is submitted that as in the investigation no offence is made out, the Superintendent of Police on due consideration directed that closure report be submitted to the Court for its approval.

11. On behalf of respondent 2 it is submitted that they had no objection for the instant Cr.M.P. and the same may be disposed of.

12. From perusal of the entire facts as surfaced it appears that no criminal proceeding is pending before the Criminal Court. On the other hand, after due investigation the investigating agency of respondent 1 also concluded for the submission of closure report before the concerned Magistrate and the same is approved by the Superintendent of Police, Mungeli.

13. As there is no proceeding pending before any Criminal Court, respondent 1 after due investigation, held that the matter is as such where the closure report as required under Section 169 of the Code be submitted for appropriate order. With the above facts, the case law cited is not applicable to the extent for any further order as the Police himself held that closure report under Section 169 of the Code be sent to the concerned Magistrate. With this, as there is no any proceeding pending, the Magistrate is required to consider such closure report on the basis of entire material available along with the investigation and to pass appropriate order on presentation of such closure report under Section 169 of the Code. This Court is not inclined to pass any order under the inherent jurisdiction under Section 482 of the Code to quash FIR and other consequential proceeding as no proceeding is pending. The other respondents also submitted and appreciated that in such a matter closure report be submitted as per the provisions of law.

14. The instant Cr.M.P. is disposed of. The concerned Magistrate has to act on the basis of provisions of Section 169 of the Code and other procedural Sections for which they are empowered to take appreciation and dispose of the same. With this the instant Cr.M.P. is disposed of without any appreciation on its merits as the facts of the instant Cr.M.P. does not require any further order in this behalf.

Sd/

(Chandra Bhushan Bajpai)

Judge