

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 1022 of 2015**

Gopal Murti Agrawal S/o Shri Krishn Sunder Agrawal, aged about 62 years, R/o Professor Colony, Road No.13, Panchwati Bhawan, Purani Basti, P.S. Purani Basti, Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Petitioner

Versus

Smt. Savitri Bai W/o Late Shri R. B. Agrawal, aged about 73 years, R/o Om Society Sunder Nagar, P.S. Deendyal Nagar, Raipur, Civil & Revenue District Raipur, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Sunil Sahu, Advocate
For Respondent	:	Shri Vikram Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board**29.04.2016**

The petitioner through the present Cr.M.P has challenged the order dated 30.09.2015 passed by the Special Judge CBI, Raipur in Criminal Revision No. 221 of 2015 whereby the revision preferred by the petitioner challenging the order dated 27.04.2015 passed by the Judicial Magistrate First Class, Raipur has been rejected.

2. The sole contention of the counsel for the petitioner is that the complaint has been registered by the JMFC without there being any statement of the complainant recorded by the Court or for that matter without there being any affidavit in support of the contents of the said complaint. In the absence of either of the two, the JMFC could not have registered a complaint and therefore, the registration of the complaint to that effect is bad in law. He further submits that the petitioner immediately filed an application for dismissal of the complaint which was dismissed by the JMFC, Raipur vide order dated

27.04.2015 against which the petitioner preferred a Criminal Revision before the Special Judge registered as Criminal Revision No. 221/2015. The Revisional Court also vide its order dated 30.09.2015 dismissed the Revision leading to the filing of the present petition.

3. Counsel for the respondent submits that on perusal of the record it would be evident that the complaint is supported with a separate affidavit and taking note of the affidavit in support of the complaint, the Court below using its discretionary power had directed for registration of the complaint and as such there is no illegality or infirmity in the impugned order. He further submits that the issue involved in the present case is squarely covered by the decision of the Supreme Court reported in (2015) 12 SCC 203 (A. C. Narayanan v. State of Maharashtra & Anr.) which has also been relied by the Court below.

4. A perusal of the said judgment referred by the counsel for the respondent it is evidently clear that the Supreme Court had clearly held that once when the complaint filed by the complainant is supported with an affidavit, it is open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him or the Magistrate can straight way proceed for registering the complaint case. In the instant case also, from the record it is evidently clear that there was a specific affidavit in support of the complaint filed by the complainant.

5. While deciding the criminal revision, the Revisional Court has also relied upon paragraph-22 of the said judgment where the Supreme Court has held as under:

“Once the complainant filed an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter upon to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint.It is only if and

where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complaint or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.”

6. Having considered the ratio laid down by the Supreme Court in the said judgment, this Court is of the opinion that there is no infirmity or illegality in the impugned order passed by the Court below.

7. Accordingly, the present Cr.M.P. being devoid of merit is dismissed.

Sd/-

P. Sam Koshy
Judge