

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 693 of 2013**

Bhupesh Baghel S/o Nand Kumar Baghel Aged About 45 Years R/o Bhilai -  
3, Distt. Durg C.G.

**---- Applicant****Versus**

1. Dr. Raman Singh, Chief Minister, State of Chhattisgarh, Raipur (CG)
2. P. Joy Omen, Ex.-Chief Secretary of Chhattisgarh Government, present address- Chairman/ Managing Director, Finance Corporation, Relley Ampalam, Distt. Tiruvananthapuram, Derla
3. Gunjan Gupta, Ex-CEO, Balco, Korba (CG) present address President & CEO, Essar Steel Minnesota Ltd. Hibbing, Minnesota-Country United States of America

**---- Respondent**


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|------------------------|---|-----------------------------------------------------------------------------------------|
| For Petitioner         | : | Mr. G.S. Ahluwalia, Adv.                                                                |
| For Respondent/R-1 & 2 | : | Mr. Jugal Kishore Gilda, Advocate General with<br>Mr. S.C. Khakhariya, Dy. Adv. General |
| For Respondent No. 3   | : | Not noticed.                                                                            |

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**Order On Board****08/04/2016**

1. With consent of the parties, matter is heard finally at motion stage itself.
2. Facts in brief for disposal of criminal revision are that on 20-7-2012, a complaint was filed against the respondents for taking appropriate action under the law under Sections 420, 467, 468, 471-A, 120B of the Indian Penal Code, 1860 (in brevity 'IPC') and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act. An application was also filed by the complainant under sub-section 3 of Section 156 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.'). The court below vide order dated 8-8-2012 dismissed the application filed by the complainant under Section 156(3) of the Cr.P.C. holding that an inquiry would be just so as to ascertain whether there is sufficient material to proceed against the accused persons and listed the matter for complainant evidence. Applicant examined himself and one Rajesh Bissa. Thereafter the court below vide order dated 3-8-2013 dismissed the said complaint under Section 203 of the Cr.P.C. Against the said order, the applicant/complainant has preferred instant criminal revision under the provisions of Section 397 read with Section 401 of the Cr.P.C. praying for setting aside the order dated 3-8-2013 and for a direction to the trial Court to issue process against the respondents in the interest of justice.

3. Heard learned counsel for the parties and perused the material available on the instant criminal revision.
4. Learned counsel for the applicant submits that Writ Petition No. 5328 of 1996 (Bharat Aluminum Company Ltd. -v- State of Chhattisgarh) was filed for issuance of writ in the nature of certiorari and other prayers. Learned Single Bench of this Court vide order dated 6-2-2009 disposed of the said writ petition with certain directions in para 53 of the order. Said order passed in W.P. No. 5328/1996 was challenged by the respondent/State of that writ petition in Writ Appeal No. 69 of 2009 under Section 2 of the CG High Court (Appeal to Division Bench) Act, 2006. The Division Bench dismissed the said writ appeal vide order dated 25-2-2010 and also dismissed the cross-objection filed by the respondent/BALCO. Against the said order, the State had not preferred any SLP before Hon'ble Apex Court. The present applicant filed an SLP before Hon'ble Apex Court being SLP No. CC-11811/2010 against the State of Chhattisgarh and other respondents. Said SLP is still pending before the Hon'ble Apex Court. Same has been filed to quash the order passed in the writ appeal and also in the writ petition. As aforementioned, the prayer of the petitioner to issue a direction to the police to investigate the matter under the provisions of Section 156(3) of the Cr.P.C. by registering FIR was dismissed by the court below and court below proceeded to hear the matter in the complaint case. The writ court vide order dated 6-2-2009 in WP No. 5328/1996 ordered regarding increased premium and lease rent and also regarding other connected prayers. It is submitted that present applicant filed the SLP against the order passed by this Court in writ petition and also in writ appeal as there is huge revenue loss to the State in the matter.
5. As per facts of the case, in the year 1961, BALCO was offered 338 acres of land for lease rent for Rs. 200 per acre. BALCO was enjoying 1616 acres of government land and also private land. BALCO had filed a writ petition in the year 1996 before the High Court of Madhya Pradesh which was later transferred to the High Court of CG and the learned Single Bench of this Court disposed of the same as aforementioned. In the year 2001, 51% of the share was given to one Starlite group and BALCO went in the control of private party. The Central Empowered Committee gave its report dated 17-10-2007. In para 11 of the observations and recommendations of the report, it is mention that :

“11. M/s BALCO is in possession of about 1,897 acre of Government land out of which about 1,751 acre is recorded as “*bade jhad ka jungle/chote jhad ka jungle*” in the revenue records –

commonly known as "Revenue Forest". In addition, it is in possession of about 914 acre of the private tenure land acquired by the State Government for the company."

6. It is further submitted that in the year 2005, an NGO Sarthak filed Writ Petition (C) No. 469/2005 before Hon'ble Apex Court along with many other petitions as mentioned in Annexure A-3. Before hearing those petitions, the Apex Court appreciated the matter and passed directions as under :-

"CEC has filed its report only quo BALCO. It is alleged that BALCO is in possession of illegal encroachment to the extent of forest land/ Revenue forest land, they are using the forest land for non-forest purpose. BALCO may file its response about the report of CEC. Meanwhile, BALCO shall not cut/remove trees, if any. Forest Department/Revenue Department shall not permit to remove the trees which are already cut.

Learned counsel appearing for BALCO seeks time to file its response.

It is also alleged that illegal mining activities are being done in the State of Chhattisgarh. CEC may file its response to the counter affidavit filed by the State.

Mr. Anil Lunia may file his response to the counter affidavit filed by the State Government.

Meanwhile, no forest land shall be used for non-forest purpose."

7. It is submitted that note of the Chief Secretary has been filed as Annexure A-9 (Copy of the said SLP pending before Hon'ble Supreme Court has not been filed in the present matter.) Learned counsel submits that as the State has not chosen to challenge the order passed in writ appeal, therefore, the State is suffering loss of revenue for Rs. 140 crores per annum. Said loss was for the reasons the land was given to Starlite on lease and despite the Apex Court's order the BALCO administration cut trees, erected buildings and used the forest. The said lease was given by the respondents by entering into a conspiracy. The note sheet of the concerned department was struck and the concerned files without any delay, hastily and hurriedly travelled to 8 tables. Concerned matter was taken to the cabinet and the decision of lease was taken by the Cabinet. It is further submitted that Rule 33 of the Business Rules though not permissible, but the proceedings were conducted under the said rules. Learned counsel further submits that in the present matter, no sanction is required. It is not proper to appreciate before issuance of summons as to whether the matter would go for conviction or not. It is a high profile case. If there would have been any investigation, the investigating agency would have collected evidence and may also register the case and identify other accused persons also. Trial court is not required to see whether there are sufficient grounds for conviction. As per settled law, if there is prima facie case then the matter has to be committed. The court

may dismiss the complaint if no prima facie material exists but when sufficient grounds were shown the proceedings should have been initiated. Reasonable evidence was adduced. Prima facie evidence was in the matter. The order of the trial Court goes to show that the trial Court appreciated the fact whether the accused may be convicted or not. The trial Court travelled beyond scope of Section 200 of the Cr.P.C. and passed the order. If he would have considered the loss of revenue then this order would not have been passed. Every note sheet is typed but the note sheet on the basis of which the matter was taken to the Cabinet is hand written which goes to show the haste in the matter. The trial Court is required to evaluate the material adduced before the trial Court. Sanction is not required. No officer or employee of the secretariat would go beyond the wishes of the Chief Minister then the then Finance Minister. The note sheet was proceeded in a hurried manner. In an handwritten note sheet the matter was taken to the Cabinet. Learned counsel submits that police be directed to investigate the matter under Section 156(3) of the Cr.P.C. or the trial court be directed to issue process against the respondents.

8. In support of the arguments advanced, learned counsel for the applicant placed reliance on a decision of Hon'ble Apex Court in the matter of **Inspector of Police and another -v- Battenapatla Venkata Ratnam and another** reported in 2015 AIR SCW 3282 wherein it is held that provision of sanction for prosecution under Section 197 of the code is with the object to protect public servant from malicious or vexatious prosecution. It cannot be treated as shield to protect corrupt officials.
9. He further placed reliance on decision of Hon'ble Apex Court in **Debendra Nath Bhattacharyya and others -v- the State of W.B. and another** reported in 1972 CRI.L.J. 1037 wherein Hon'ble Apex Court dealt with the scope and purpose of power to dismiss a complaint.
10. Further reliance is placed in **Balraj Khanna and others -v- Moti Ram** reported in 1971 CRI.L.J. 1110 wherein it is held that if Magistrate is satisfied on the basis of the material placed before him by a complainant and that the prima facie case is made out, he must commit the case for trial.
11. Also reliance is placed on **Chandra Singh -v- Prokash Chandra Bose alias Chabi Bose and another** reported in AIR 1963 SC 1430 wherein Hon'ble Apex Court laid down about scope and object of inquiry under Section 202(1) of the Cr.P.C. and also held that what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.

12. Also reliance is placed on **Laxminarayan Upadhyay -v- State of Chhattisgarh and others** reported in 2007 (3) Crimes 478 (Chh.) wherein the puisne judge of this Court held that object of inquiry under this section is to ascertain whether the allegations made in the complaint were intrinsically true. Magistrate is not required to rely upon any material besides that words “sufficient ground” means satisfaction for prima facie case was made out or not.
13. On the other hand, learned Advocate General in reply submitted that the court below elaborately discussed the merits of the case. Whatever decision taken is taken in discharge of official duties. It is the Chief Secretary who moved the note to the Cabinet. The Cabinet is presided by the Chief Minister. As per law, they are public servant. Section 197 of the Cr.P.C. is bar. The bar is attracted in the matter. Respondents are the public servant. If they moved any note, they had done so in discharge of their official duties. So far as the facts regarding not filing SLP against the order of writ appeal, relation of the State and the Law officer is like a client and a lawyer. State is not bound to follow the opinion of the law officer and for the same they cannot be held accused as the decision has been taken upon consideration of entire facts and material in the capacity of public servant. Note sheet is the internal matter of the State. Officers take decisions on the consensus. So far as any allegation regarding penal offence and offence under Prevention of Corruption Act is concerned, sanction is required. Learned Advocate General submitted that as the decision was taken while discharge of official duties, hence for the offence under the provisions of Prevention of Corruption Act also, cognizance cannot be taken without any sanction. While hearing the instant criminal revision, this court can also consider those points which were not considered by the court below. The bar of Section 197 of the Cr.P.C. is one of them. Learned Adv. General further submits that the court below while passing the impugned order appreciated the evidence adduced by the petitioner. The petitioner never submitted that he had applied before the Hon'ble Governor for sanction in the matter or any prayer for sanction is pending. The petitioner in his statement under Section 200 of the Cr.P.C. has not stated the reason as to why the sanction is not necessary. Except the statement of complainant one witness Rajesh Biassa was also examined. As per this witness he collected the documents under the Right to Information Act and simply handed over the same to the petitioner. The trial Court appreciated entire material adduced and observed that as per allegation there is no change in the note sheet and allotment to

BALCO administration for lease premium and lease amount was advanced. On behalf of the applicant, there is no averment against R- 1 and 2 because the Chief Minister and the Chief Secretary never write note sheet for themselves. Note sheet was moved and forwarded by the concerned Department. Learned Advocate General argued that it cannot be accepted that the note sheet was struck by the proposed accused because the further note sheet goes to show that the same was written on behalf of the Revenue Department and submitted before the concerned Minister for said department. It is further submitted that it is not correct that in a haste, the note sheet travelled to Cabinet with 8 tables. Learned court below appreciated that 5 tables are of Revenue Departments itself and thereafter the note sheet reached to the subordinate of the Chief Secretary and thereafter to the Chief Secretary and ultimately to the Chief Minister for taking it to the Cabinet. The trial Court held that as the matter belongs to only two departments hence it cannot be said that the note sheet travelled for 8 tables with a criminal conspiracy and other facts. It is further submitted that the complainant had not filed copy of the order passed by the Single Bench and Division Bench of this court though as the matter was reported the court below appreciated the facts and the order passed by learned Single Bench and discussed the order of learned Single Bench. It is submitted that by appreciating the entire fact and evidence, and as wrongful gain is not proved, the trial court dismissed the complaint after appreciating entire merits. Though technical points were not considered but the same may be appreciated. If for the sake of argument though not admitted, the facts are considered to be true even then as all the decisions were taken in the Cabinet fully authorized to take the decision on behalf of the State hence sanction is required. The matter belongs to a political vendetta as the petitioner hails from other camp. The SLP filed by the petitioner himself, is pending, he has an opportunity to raise all issues before the Hon'ble Apex Court and thereafter may proceed for any other litigation. Hence it is submitted that the instant revision may be dismissed.

14. Perused the record of the court below, the documents annexed and the impugned order passed by the court below.
15. On minute scrutiny of the documents, it appears that the petitioner never challenged the impugned order dated 8-8-2012 whereby and whereunder learned trial Court dismissed the application filed under Section 156(3) of the Cr.P.C. and proceeded further in the said complaint case. By filing of the instant criminal revision, it is not prayed that the impugned order dated 8-8-

2012 be quashed and police be directed to register the FIR and to investigate the same. Instant criminal revision is only against the order dated 3-8-2013 and for the prayer in connection with that order only. Therefore, in the considered opinion of this Court, the prayer made by learned counsel for the petitioner that police be directed under Section 157(3) of the Cr.P.C. to investigate the matter for registering the FIR cannot be accepted and the said oral prayer is hereby dismissed.

16. So far as the validity, legality, correctness of the impugned order dated 3-8-2013 is concerned, this court as a revisional court is empowered under section 397 read with Section 401 of the Cr.P.C. to examine regarding those three points in the matter.
17. Perusal of the material available on record goes to show that there was no prayer for sanction before the Hon'ble Governor or said prayer is not pending. Perusal of the material further goes to show that decision has been taken by the Cabinet which is duly authorized to take the decision. Other respondents acted in discharge of their official duties. Prima facie it appears that sanction is required in the matter. So far as other facts are concerned, it is submitted and accepted on behalf of the petitioner that against the order of the writ court and writ appeal, SLP was filed by the petitioner to quash the orders of both the above courts and the same is pending before Hon'ble Apex Court. Said SLP is for the same cause i.e. loss of revenue or other facts, violation of any order passed by the Hon'ble Apex Court by the BALCO administration and against the decision of the State for grant of lease and fixing the premium, all those matters are connected. They cannot be separated. They are already pending before the Apex Court. Since the matter filed on behalf of the petitioner himself is sub-judice before the Supreme Court, as per the norms of judicial discipline this court cannot appreciate the facts and issues which are subject matter of the said SLP. Further the petitioner has not chosen to even file copy of the SLP so as to appreciate the facts and grounds taken in the SLP.
18. Appreciation of evidence whatsoever adduced before the court below goes to show the court below appreciated each and every fact and by detailed appreciation, passed the order and dismissed the complaint. On perusal of the said appreciation, it cannot be held at this stage that the respondents committed any offence in the matter.
19. Upon considering the entire facts, the case laws cited by the petitioner are of no help to the petitioner as to get the impugned order quashed by this Court.

20. On due consideration, I do not see any reason, any illegality or incorrectness committed by the court below. Consequently, instant criminal revision being sans substance deserves to be and is hereby dismissed at motion stage itself.

Sd/-  
(Chandra Bhushan Bajpai)  
Judge

Pathak