

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 145 of 2016**

Titash Banik, S/o. Shri S.R.Banik, Aged About 35 Years, R/o. Madhubanpara, Raigarh, Police Station & Tahsil Raigarh, Civil & Revenue District Raigarh, Chhattisgarh.

---- **Petitioner****Versus**

State Of Chhattisgarh, Through the Superintendent Of Police, E.O.W. Near Shankar Nagar, Raipur, District Raipur, Chhattisgarh

---- **Respondents**

 For Petitioner : Mr. Surfaraj Khan, Advocate
 For Respondent : Mr. Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****23.12.2016**

Heard

1. An FIR was registered against the petitioner on 04.06.2016 under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The petitioner thereafter applied for the copy of the FIR through his representative Advocate after payment of challan on 13.06.2016 as per Annexure P-2 and it is stated that requisition was made to challenge the registration of FIR. It is contended that neither the said application was allowed nor was refused but was shelved as such there was a deemed refusal though the copy of FIR is alleged to have been sent to the Magistrate. Thereafter when the application was made to the Magistrate, only the photocopy of FIR was given without any authenticity of the same.
2. Learned counsel for the petitioner would submit that the said deemed refusal of the "certified copy" by the police authorities or

the concerned Court violates Article 21 of the Constitution of India as it infringed the right to defend the petitioner for the alleged offence. He placed his reliance in ***Youth Bar Association of India v. Union of India & Others***, decided on 07.09.2016 by the Hon'ble Supreme Court in Writ Petition (Criminal) No.68 of 2016. It is vehemently submitted that in the face of the direction issued by the Supreme Court, if it has not been followed, then it would be a gross violation and contempt of the order of the Supreme Court. Therefore, it is prayed that the respondent be directed to supply the certified copy of the FIR forthwith as per application dated 13.06.2016.

3. Learned State counsel opposes the same and would submit that the copy of the FIR having been sent to the Magistrate under Section 157(1) of Cr.P.C. The petitioner could avail the copy of the same from the concerned Court and it is not necessary on the part of the police authorities to supply the copy of the FIR; therefore, the petition be dismissed being without any merit.
4. Heard learned counsel appearing for the parties and perused the judgment passed by the Hon'ble Supreme Court in ***Youth Bar Association v. Union of India & Others***.
5. Their Lordships in that case while issuing different directions, considered Article 21 of the Constitution of India which guarantees the right of liberty. Reference was made to the case of ***State of West Bengal & Others v. Committee for Protection of Democratic Rights, West Bengal & Others*** reported in (2010) 3 SCC 571. The recent judgment reiterates the earlier view expressed by the Supreme Court that Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives

and personal liberties except according to the procedure established by law. It was further fortified that the said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim and the State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

6. Further the Supreme Court while considering the case reiterated the law laid down in ***D.K.Basu v. State of West Bengal*** reported in *AIR 1997 SC 610* and it was observed that the citizen cannot be expected to shed off his fundamental right to life to be put in abeyance on his arrest. The right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.
7. Considering the various aspects in case of *Youth Bar Association of India* (supra), the Supreme Court has laid down the following observation and the relevant part of it reproduced as under :

“12. Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:-

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his

representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.

(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being

had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.

(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.

(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.

(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.

(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.

8. In this case, applying the aforesaid principles, the submission made by the State that the petitioner can avail a copy of the FIR from the concerned Magistrate cannot be appreciated and thereby the police authorities can be absolved of their duties against the observation of Supreme Court and police officers would be under the duty to provide the FIR if applied for as per the direction issued by the

Supreme Court and any violation would sound in contempt. It is further observed that even if the copy of FIR has been forwarded to the Magistrate then in such case too, the person seeking copy of FIR cannot be denied. The observation is based on inherent object of Constitution that one person cannot be denied to get a certified copy of the FIR from the police authorities as it would offend the right guaranteed under Article 21 of the Constitution of India. However the exception is carved out like offences of sexual nature, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and other such offences. It is expected that State shall abide by the orders passed by the Supreme Court and upload the FIR in the police website and in absence thereof any official website of the State Government.

9. Here in this case, since the certified copy of the FIR has not been supplied till date, in view of the aforesaid discussion, the respondent is directed to supply the certified copy of the FIR forthwith to the petitioner as per the direction passed by the Hon'ble Supreme Court.
10. In a result, the petition is allowed.

Ashok

Sd/-
(Goutam Bhaduri)
Judge