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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.293 of 2015

Smt. ABC, W/o XYZ, aged about DZ years, R/o Village Tapranga, Post Dhaurabhanta, Thana & Tehsil Tamnar, District Raigarh (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, New Raipur (C.G.)
2. Central Bureau of Investigation (CBI), Through its Director, Plot No.5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi 110003.
3. Superintendent of Police, Raigarh, District Raigarh (C.G.)
4. Mr. Navin Jindal, Chairman, Jindal Steel and Power Ltd., Tamnar, Thana & Tehsil Tamnar, District Raigarh (C.G.)
5. Mr. Bhargava, Manager, Jindal Steel and Power Ltd., Tamnar, Thana & Tehsil Tamnar, District Raigarh (C.G.)
6. Managing Director, Jindal Steel and Power Ltd., Tamnar, Thana & Tehsil Tamnar, District Raigarh (C.G.)

---- Respondents

For Petitioner: Mr. M.L. Sharma and Mr. Harsh Wardhan,
Advocates.

For State/Respondents No.1 and 3: -

Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

13/04/2016

1. The petitioner herein has filed this writ petition under Article 226 of the Constitution of India invoking the extraordinary jurisdiction of this Court seeking direction for lodgment of FIR

against the private respondents herein and investigation of the matter by the Central Bureau of Investigation (for short 'the CBI') and also for protection of life and security.

2. The afore-stated writ petition has been filed on the following factual backdrop: -
3. The petitioner herein had filed W.P.(Cr.)No.235/2014 before this Court praying for investigation of the matter by the CBI, registration of FIR and trial of the private respondents herein who have allegedly, sexually assaulted and robbed the chastity of the petitioner, which was disposed of by a co-ordinate Bench of this Court by order dated 6-1-2015 directing the petitioner to visit the Office of the Superintendent of Police, Raigarh, and further directing the Superintendent of Police for proceeding ahead in the matter, in accordance with law laid down by the Supreme Court in the matter of **Lalita Kumari v. Government of Uttar Pradesh and others**¹. Thereafter, the petitioner filed W.P.(Cr.)No.9/2015 before the Supreme Court of India which was dismissed as withdrawn with liberty and thereafter, again the petitioner filed Transfer Petition (Cr.) Diary No.2305/2015 before the Supreme Court which was also withdrawn reserving liberty to approach the High Court for such redress as may be legally permissible. Thereafter, W.P. (Cr.)No.13/2015 was filed by the petitioner in which a co-

¹ (2014) 2 SCC 1

ordinate Bench of this Court directed the petitioner to appear before the Superintendent of Police, Raigarh on 27-2-2015 and to submit a written complaint or to request the Superintendent of Police to reduce her oral complaint into writing and further directed that the statement recorded shall forthwith be sent to the concerned investigating officer and preliminary enquiry may be completed within a period of ten days.

4. The petitioner did not appear before the Superintendent of Police and made a report on 5-3-2015 to the Superintendent of Police, Raigarh, in writing and thereafter, got registered an FIR under Section 154 of the CrPC before Police Station Neb Sarai, South Delhi, bearing FIR No.460 dated 4-4-2015 for offence under Section 328 of the IPC. Present writ petition has been filed thereafter, on 18-12-2015 seeking registration of FIR against the private respondents for offence under Sections 328, 364 and 304 of the IPC in addition to offence under Sections 354A, 354B, 375, 376, 376D and 377 of the IPC, and also has prayed for investigation by the CBI and to provide security for protection of life of the petitioner. This Court by order dated 12-1-2016, directed the State counsel to seek instructions in the matter.
5. Mr. M.L. Sharma, learned counsel appearing for the petitioner, would submit that in compliance of the order dated 25-2-2015

passed in W.P.(Cr.)No.13/2015, the petitioner could not appear before the Superintendent of Police, Raigarh, as she was attacked by the private respondents and their henchmen who tried to destroy her documents and to kill her three times in Delhi, as two FIRs have already been registered in Delhi against the accused persons. On 8-8-2015, the petitioner also tried to reach Police Station Tamnar for recording her statement, but she could not succeed, as she was attacked and she had taken treatment on 19-8-2015 at Tamnar hospital and still under treatment and, therefore, prayed for such direction.

6. Mr. Arun Sao, learned Deputy Advocate General appearing for the State/respondents No.1 and 3, on instructions, would submit that in compliance of the order dated 25-2-2015 passed by this Court, Police Station Tamnar has started preliminary enquiry on the complaint of the petitioner dated 5-3-2015 submitted by the petitioner before the Superintendent of Police, Raigarh through registered post in which the petitioner and her family members have declined to record their statements despite sincere efforts made by the concerned police officers of Police Station Tamnar, as notices were issued. However, learned Deputy Advocate General would further submit that statements of other witnesses like real brother of the petitioner, brother of husband of the

petitioner and others. The complaint has thoroughly been enquired into and in the said enquiry, no cognizable offence whatsoever has been found to be committed. Thus, the order of this Court has been duly complied with by the State. He would also submit that preliminary enquiry has been conducted in light of decision of the Supreme Court in the matter of **Lalita Kumari** (supra), specifically paragraph 12.6, as there is abnormal delay and laches in initiating criminal prosecution, as the incident is alleged to be of the years 2003 and 2010 and therefore, the preliminary enquiry conducted by the investigating authority is per se in accordance with law. He would finally submit that the order of this Court dated 25-2-2015 in which this Court has directed to conduct preliminary enquiry has attained finality, as it has not been challenged. The petitioner had filed two successive writ petitions and the orders passed therein have become final. Now, the petitioner cannot be allowed to maintain third writ petition on the same cause of action and as such, the writ petition deserves to be dismissed. Even otherwise, the petitioner is having efficacious and statutory alternative remedy under the provisions of the Code of Criminal Procedure, 1973, for redressal of her grievance, as such, the writ petition is not maintainable.

7. I have heard learned counsel for the parties and also gone through the record with utmost circumspection and given

thoughtful consideration to the same.

8. In order to consider the plea raised at the bar, it would be appropriate to notice the events leading to filing of this writ petition. The petitioner firstly filed W.P.(Cr.)No.235/2014 and on 6-1-2015, the writ petition was disposed of with following directions: -

“5. Submission made by learned Advocate General appears to be reasonable. Therefore, it is directed that the petitioner may visit the office of Superintendent of Police, Raigarh along with her counsel for submission of complaint. On such submission, the Superintendent of Police, Raigarh shall forward the same to the concerned Police Station for proceeding ahead in the matter in accordance with law laid down by the Supreme Court in **Lalita Kumari** (supra). It is also directed that the petitioner, along with her counsel, shall visit the office of Superintendent of Police, Bilaspur by 6.30 pm today and thereafter she will be provided adequate security for her onwards journey to the office of Superintendent of Police, Raigarh at State expenses. It is expected of the Superintendent of Police to supervise and monitor the issue so that the law laid down by the Supreme Court in **Lalita Kumari** (supra) is fully adhered.

6. With the above observations and directions, the writ petition is finally disposed of. However, it is made clear that this Court has not passed

any order not has made any observations on the merits of the issue.”

9. Thereafter, the petitioner preferred W.P.(Cr.)No.9/2015 before the Supreme Court which was dismissed as withdrawn with liberty by order dated 19-1-2015. The order states as under: -

“Learned counsel for the petitioner seeks leave to withdraw this writ petition reserving liberty for the petitioner to seek such other redress including redress by way of a special leave petition against the order passed by the High Court in W.P.(Cr.)No.235 of 2014 in accordance with law.

The writ petition is accordingly dismissed as withdrawn with the liberty prayed for.”

10. Thereafter, the petitioner preferred Transfer Petition (Criminal) Diary No.2305/2015 before the Supreme Court which was also dismissed as withdrawn with liberty to approach the High Court for such redress as may be legally permissible, by order dated 2-2-2015 and the Supreme Court held as under: -

“After arguing the matter at some length, learned counsel for the petitioner seeks leave to withdraw this petition reserving liberty for the petitioner to approach the High Court for such redress as may be legally permissible. The Transfer Petition is dismissed as withdrawn with the liberty prayed for.”

11. W.P.(Cr.)No.13/2015 was filed before this Court by the petitioner claiming identical reliefs in which this Court after

hearing the parties, private respondents and the State directed as under by order dated 25-2-2015: -

“10. Considering the previous order passed by this Court and for the fact that a prayer for recording statement of the petitioner by videography was also made in the petition filed before the Supreme Court but the same was withdrawn as also for the statement made by learned Advocate General, this writ petition is disposed of with a direction that the petitioner shall appear before the Superintendent of Police, Raigarh at 10.30 am on 27.2.2015. It will be open for the petitioner to submit a writ complaint or to request Superintendent of Police to reduce her oral complaint into writing. This process may be conducted by a lady police personnel in the presence of SP, Raigarh. Since learned Advocate General has informed that preliminary enquiry is already underway, statement recorded by the lady police personnel, as indicated above, shall forthwith be sent to the concerned Investigating Officer and thereafter preliminary enquiry may be completed within a period of 10 days.”

12. Thereafter, the petitioner filed M.C.C.No.292/2015 for modification/clarification of the order dated 25-2-2015 passed in W.P.(Cr.)No.13/2015 in which this Court declined the prayer by holding as under: -

“After hearing learned counsel for the applicant/ petitioner, this Court does not find any ground to

modify or clarify the order dated 25-2-2015,
passed in WP (Cr) No.13/2015.”

13. Now, this third writ petition has been filed claiming similar relief for registration of FIR for the above-stated offences and enquiry by the CBI. In addition, the petitioner in this writ petition has also prayed for registration of offence under Sections 328, 364 and 304 of the IPC apart from other offences which she has prayed in other writ petitions.

14. Thus, in sum and substance, the petitioner's relief(s) in the writ petition is registration of FIR against private respondents and investigation of offence by the CBI.

15. In the first writ petition namely W.P.(Cr.)No.235/2014, this Court directed the petitioner to visit the Office of the Superintendent of Police, Raigarh for submission of complaint and also directed the Superintendent of Police to forward the same to the concerned police station for proceeding ahead in the matter in accordance with law laid down by the Supreme Court in **Lalita Kumari** (supra), but the petitioner filed second writ petition namely W.P.(Cr.)No.13/2015 before this Court stating inter alia that she along with her counsel visited the office of the Superintendent of Police, Raigarh on 7-1-2015 and served a copy of the order passed by this Court along with an application, but the Superintendent of Police compelled her to state the entire incident to him and the Superintendent of

Police informed that the High Court has not issued any direction for recording her statement through videography and, therefore, the petitioner should go to Tamnar Police Station where the Station House Officer would do the needful, if the complaint is in given in writing, and he will not do anything in his office. Upon hearing learned counsel for the parties, this Court directed that the petitioner shall appear before the Superintendent of Police, Raigarh on 27-2-2015 making it open to the petitioner to submit a written complaint or to request the Superintendent of Police to reduce her oral complaint into writing, and upon doing the needful, the Court had also directed that preliminary enquiry may be completed within a period of ten days.

16. It is the case of the petitioner that she could not visit the Superintendent of Police, as directed, on 27-2-2015 on account of the attack made by the opposite party and she submitted written complaint dated 5-3-2015 by registered post to the Superintendent of Police, Raigarh.

17. It is the case of the State that in spite of written request made to the petitioner, the petitioner's son and the petitioner's daughter, they refused to give their statements, however, statements of other witnesses, even close relatives of the petitioner, have been recorded and upon thorough enquiry on fourteen paragraphs of the complaint dated 5-3-2015/3-3-

2015, no cognizable offence whatsoever has been found to be committed and as such, the order of this Court dated 25-2-2015 has been fully complied with.

18. Mr. Sharma, learned counsel for the petitioner, submits that preliminary enquiry could not be conducted without registration of FIR.

19. In **Lalita Kumari** (supra), paragraph 12.6, Their Lordships of the Supreme Court have held as under: -

“12.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.”

20. It has clearly been held by Their Lordships that in cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months' delay in reporting the matter without satisfactory explanation, preliminary investigation can be made.

21. In the present case, it is the case of the respondent State that preliminary enquiry has been done, as complaint of the petitioner relates back to 13-11-2003 and 28-8-2010 and no cognizable offence whatsoever has been found to be committed by the private respondents.

22. Apart from this, this Court by order dated 25-2-2015, after noticing the submission of learned Advocate General that preliminary enquiry is already under way, expressed the hope that preliminary enquiry may be completed within a period of ten days. It is the case of the State Government that after receipt of registered complaint dated 3-3-2015/5-3-2015, the fourteen paragraphs complaint has been thoroughly enquired into. The petitioner, her son and her daughter despite several requests made by the competent officer, refused to record their statements before police officer supporting their own case and on investigation, no cognizable offence is said to have been committed by the private respondents. Thus, initiation of preliminary enquiry and completion of preliminary enquiry by the respondent State cannot be questioned by the petitioner, as it is also supported by the judgment of the Supreme Court in the matter of **Lalita Kumari** (supra) and by the order of this Court dated 25-2-2015 which has become final as it has not been challenged by the parties to the writ petition.

23. Aforesaid facts elaborated herein-above indicate that the petitioner is reluctant in making statement before the police officers for recording her statement and her son and daughter had also equally shown their reluctance in making statement before the police. Though this Court had twice shown indulgence in favour of the petitioner directing the petitioner and police authorities for recording her statement, but anyhow, the petitioner could not appear and the State has enquired the matter, and this writ petition has been filed, which this Court is not inclined to entertain in light of the facts elaborated herein.

24. At this stage, it would be appropriate to notice the decision of the Supreme Court in the matter of **Sakiri Vasu v. State of Uttar Pradesh and others**² in which the Supreme Court has held as under in paragraphs 26 and 27: -

“26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under [Section 154\(3\)](#) CrPC or other police officer referred to in [Section 36](#) CrPC. If despite approaching the Superintendent of Police or the officer referred to in [Section 36](#) his grievance still persists, then he can approach a Magistrate under [Section 156\(3\)](#) CrPC instead of rushing to the High Court by way of a writ petition or a petition under [Section 482](#) CrPC. Moreover, he has a further remedy of filing a

² (2008) 2 SCC 409

criminal complaint under [Section 200](#) CrPC. Why then should writ petitions or [Section 482](#) petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under [Section 482](#) CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under [Sections 36](#) and [154\(3\)](#) before the police officers concerned, and if that is of no avail, under [Section 156\(3\)](#) CrPC before the Magistrate or by filing a criminal complaint under [Section 200](#) CrPC and not by filing a writ petition or a petition under [Section 482](#) CrPC.”

25. Thus, in **Sakiri Vasu** (supra), Their Lordships of the Supreme Court have held that the Magistrate has very wide powers to direct registration of FIR and ensure proper investigation, and that case squarely applies to the facts of the present case. In light of the decision of the Supreme Court in **Sakiri Vasu** (supra), the petitioner is at liberty to file criminal complaint

before the jurisdictional Magistrate under the provisions of the Code of Criminal Procedure, 1973, if so advised.

26. The writ petition stands finally disposed of with the aforesaid observation. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge