

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1201 of 2015**

1. Bunda Vibhar S/o Late Shri Vipra Vibhar Aged About 30 Years R/o Jyoti Nagar, Kota Ward No. 12, P.S. Saraswati Nagar, Tahsil & District Raipur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Station House Officer, P.S. Saraswati Nagar, Tahsil & District Raipur Chhattisgarh

---- Respondent

For Petitioner	:	Shri Raghvendra Pradhan, Advocate.
For Respondent/ State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

04/03/2016

1. With the consent of the parties, heard finally at the motion stage itself.
2. The brief facts are that the petitioner/applicant had filed an application under Section 73 of the Code of Criminal Procedure, 1973 (in brevity the Code) and prayed that he had already made a complaint in writing before the Superintendent of Police Raipur, the Police Station of Sarswati Nagar had registered Crime No. 245/2013 against the accused persons under Sections 420, 467, 468, 471 & 120B of the IPC and the said police is deliberately not making any arrest of the said accused persons, hence, they may be arrested and application may be disposed of accordingly.
3. The Court below in a MJC unregistered after appreciation passed the order on 28.1.2015 and held that there is no charge sheet filed before the said criminal court. The Investigating Officer informed regarding pendency of the enquiry. Section 73 of the Code is not applicable, hence, dismissed the said

application. Against the said order, the petitioner had filed an unregistered Cr. Revision petition before the Additional Sessions Judge/Special Judge, Prevention of Corruption Act, 1988 (for brevity the Act of 1988), Raipur (CG). The Court vide order dated 5.3.2015 held that the circumstances upon which, the Magistrates are given jurisdiction to issue warrant of arrest, the said circumstance is not present in the matter and unless the stage so arrived, the Police Officers are not required to arrest any person. The said revisional Court affirmed the order passed by the concerned Magistrate and dismissed the said revision. After the order dated 5.3.2015, the petitioner had filed the instant Cr.M.P. wherein the grounds are taken that after such a long period, no action has been taken by the Police against the accused persons despite registration of the FIR.

4. With this, the Court ought to have passed the order for making arrest of the accused persons. The courts below have committed grave error of law. The offence registered against the accused persons are cognizable, non-bailable and despite the said fact arrest of the accused persons were not made as a serious error of law. Hence, it is prayed that the Court may quash the order dated 5.3.2015 and relief as prayed in the said application under Section 73 of the Code be given.

5. Heard learned counsel for the petitioner and perused the documents annexed along with instant petition.

6. Learned counsel for the petitioner supported the entire grounds taken in the petition and submitted that looking to the grounds taken, the relief as sought may be given by issuance of warrant of arrest and to make the accused arrested for the offence registered against them .

7. For the relevance, provisions of Section 73 of the Code read as under :

“73. Warrant may be directed to any person- (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71”.

8. From perusal of the provisions of Section 73 of the Code, it appears that the same is applicable for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest. No other category is included in the provision. Undisputedly, as with the case of the petitioner, on his report, Saraswati Nagar, police have registered an FIR, bearing crime number and sections as mentioned in the order dated 28.1.2015. From perusal of the facts, it goes to show that the so called accused are not declared as escaped accused, neither declared as proclaimed offender and also not accused of non-bailable offence and evading arrest. Simply by a registration of a non-cognizable offence, the status of the said accused automatically does not fall under the category and person as provided in Section 73 of the Code.

9. On due consideration, I do not see any illegality or impropriety in the orders passed by both the Courts below dated 28.1.2015 and 5.3.2015. The instant Cr.M.P. has no substance and it deserves to be dismissed and is hereby dismissed. However, the petitioner may raise issue in question before the appropriate forum at the appropriate stage, if he wish so.

10. The petition is dismissed with the above observation.

Sd/

(Chandra Bhushan Bajpai)
Judge