

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 166 of 2016**

Smt. Nanda Khakhariya W/o Dr. Anil Khakhariya Aged About 45 Years
R/o C-80/2, Sector-2, Devendra Nagar, Tahsil And Distt. Raipur
Chhattisgarh.

---- Applicant**Versus**

1. Sharad Shukla S/o Shri R.K. Shukla Aged About 50 Years Present President Chhattisgarh Table Tennis Association, Raipur, R/o 291, Sunder Nagar, Distt. Raipur Chhattisgarh.
2. Vinay Baisvade S/o Ramsnehi Baisvade Aged About 41 Years Present Secretary Chhattisgarh Table Tennis Association, R/o I -12, Shatabdi Nagar, Telibandha, Distt. Raipur Chhattisgarh.
3. Kishore Jadvani Aged About 40 Years Present Chairman, Disciplinary Committee Chhattisgarh Table Tennis Association, Raipur, R/o 3 Ra Mala, Laxmi Plaza, Spare Shala Chowk, Distt. Raipur Chhattisgarh.
4. Sushri Rai W/o Rajiv Rai Aged About 39 Years R/o B 210, Shiv Vatika, Ashvani Nagar, Thana Sunder Nagar, Purani Basti, Distt. Raipur Chhattisgarh.
5. Abhishek Raj Aged About 21 Years R/o A.G. Office, Vidhansabha Road, Raipur Chhattisgarh.
6. Smt. Purnima Sharma W/o Rakesh Sharma Aged About 39 Years R/o Green Midas, 404, Garnet Daldalsivani, Mova, Distt. Raipur Chhattisgarh.
7. Ansuman Sharma S/o Rakesh Sharma Aged About 16 Years R/o Green Midas, 404, Garnet Daldalsivani, Mova, Distt. Raipur Chhattisgarh.
8. Rajiv Rai Aged About 42 Years R/o B-210, Shiv Vatika, Ashvani Nagar, Thana Sunder Nagar, Purani Basti, Distt. Raipur Chhattisgarh.

---- Respondents

For the Applicant : Shri Parag Kotecha, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****24/02/2016**

1. Heard on admission.

2. It is submitted on behalf of the Applicant that the Respondents were not noticed, the Court below has not taken any cognizance against the Respondents, the case was not registered and in absence of the complainant on 22.1.2016 the complaint was dismissed for want of prosecution. In the above facts, the instant criminal revision may be disposed of without even noticing the Respondents.

3. Looking to the facts and the question of law involved, the matter is heard finally at the motion stage itself without noticing the Respondents.

4. Brief facts required for adjudication of the instant criminal revision are that the Applicant had filed a complaint case before the Special Judge, Prevention of Corruption Act, 1988 (in short 'Act of 1988'), Dhamtari, Chhattisgarh against the Respondents for taking cognizance under Sections 409, 420 and 120B of the Indian Penal Code (for short 'the IPC') read with Section 13 sub-section (1) of the Act of 1988 alongwith an application under Section 156 sub-section (3) of the Code of Criminal Procedure, 1973 (for short 'the Code'). After filing of the said complaint, the Court below directed the concerned Superintendent of Police to inquire into the matter and submit his report till the further date of hearing i.e. 22.1.2016. At the time of hearing, neither the Complainant was present nor any representation was made on her behalf and thus the Court below dismissed the said complaint case for want of prosecution.

5. Against the said order, Learned counsel for the Applicant had filed the instant criminal revision and submitted that the order passed by the Court below is bad in law as per provisions of Section 249 of the Code. As the report was called from the concerned Superintendent of Police, the Court has to wait for the said report regarding any further action, as per law. There

is no any procedure but Section 249 of the Code denotes that when a proceeding is instituted by a Complainant, on account of absence of the Complainant on the date fixed for hearing, and when the offence is lawfully compoundable or the same is not cognizable, the Court may dismiss the said complaint and discharge the accused. The order passed by the Court below is incorrect, illegal and improper as the offence alleged against the Respondents is cognizable. Hence, the impugned order may be set aside and the Court below be directed to decide the matter on its merits in accordance with law.

6. Heard Learned counsel for the Applicant.

7. Learned counsel for the Applicant submits that in the present matter Section 397 read with Section 401 of the Code is applicable and also Section 482 of the Code is attracted regarding the use of inherent powers in the matter to secure the ends of justice. On an application under Section 156 sub-section (3) of the Code, the Court below directed the concerned Superintendent of Police for an inquiry and to submit his report. The report was not submitted before the concerned Court till the impugned order dated 22.1.2016 was passed. The Applicant/ Complainant had filed a compliant case under the aforementioned provisions of law for taking cognizance of the offence committed by the Respondents and to punish them if they are found guilty after a due trial. The Court below though not mentioned the provisions applicable regarding dismissal of the complaint case for want of prosecution but so far as Chapter XIX-C of the Code is concerned, Section 249 of the said Chapter of the Code is the only provision of law whereby in absence of the Complainant at any time before the charge has been framed, the Court below may, in its discretion, discharge the accused if the offence is

lawfully compoundable or is not a cognizable one. In the present matter, the prayer is made for taking cognizance of the offence under penal sections which are not compoundable and are cognizable. In the above facts, the Court below erred in law by dismissing the complaint case for want of prosecution in absence of the Complainant. On 22.1.2016, the Complainant before Additional Sessions Judge, FTC, Raipur stood as a surety for her husband in a Special Sessions Case No.19 of 2016 (State of Chhattisgarh vs. Dr. Anil Khakhariya). Looking to the entire facts and circumstances, the revision may be allowed by invoking inherent revisional jurisdiction. The impugned order dated 22.1.2016 may be quashed and the Court below may be directed to proceed further in accordance with law.

8. To appreciate the arguments advanced in this behalf, I have perused the petition and the annexed documents in the matter.

9. The provisions of Section 156 sub-section (3) of the Code of Criminal Procedure, 1973 relevant for appreciation of the pleadings are as under:

'156. Police officer's power to investigate cognizable case.--

(1) xxx

(2) xxx

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

Section 249 of the Code of Criminal Procedure, 1973 reads as under:

249. Absence of complainant.-- When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the

complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.”

10. From a close scrutiny, it appears that the matter falls under Chapter XIX-B of the Code as the case was instituted otherwise than on police report. Perusal of sections of offence mentioned in the complaint case goes to show that the offence may not be completely compoundable as per provisions of law. It is also apparent from perusal of the sections mentioned in the complaint case that the offence is cognizable. From perusal of the said Chapter XIX-C of the Code it appears that in Section 249 of the Code there is no provision for proceeding further in a complaint case regarding dismissal when the Complainant remains absent on the date of hearing as in the present case. Though the Court below has not mentioned the provisions of law under which it had dismissed the case for want of prosecution yet from perusal of Section 249 of the Code and in absence of any other provision it is crystal clear that in absence of the Complainant at any time before the charge has been framed, the accused can be discharged only by application of Section 249 of the Code.

11. Perusal of the compliant case shows that the Court below directed the concerned police officer (Anti-Corruption Bureau) Raipur, Chhattisgarh to make an inquiry into the matter and submit his report (as stated, at present, there is no Anti-Corruption Bureau functioning in the State of Chhattisgarh and the said department was existing earlier and the same has been reconstituted in the name of State Bureau of Investigation of Economic Offences (SBI of EO).) There is no provision mentioned in the impugned

order for directing the said inquiry and for submitting report. There is only provision that is Section 156 sub-section (3) of the Code and for invoking this provision the Complainant, by filing a supportive application, may make a prayer for inquiry into the matter by a police officer and submission of his report. Thus, it is quite apparent that the order passed for inquiry and report must be under Section 156 (3) of the Code. If there is an order made for inquiry and report, the same must be in accordance with the relevant provisions of law and such order passed by the Court should not affect the proceedings of the case. The Court should always take recourse of law, but it failed to appreciate the same. The Court below also failed to mention in its impugned order the correct provisions of law applicable for proceeding further in case of absence of the Complainant as the complaint case was filed for taking cognizance of the offence which was not a compoundable one and was cognizable by the Court. The Court below could not proceed under Section 249 of the Code. It has to proceed after the receipt of the inquiry report called for by it either through acting upon the same or to proceed further under the provisions of Chapter XV of the Code which relates to complaints to Magistrates and also in accordance with the other relevant provisions regarding issuance of process and for further proceeding in the matter.

12. On due consideration, this is a fit case where the inherent revisional jurisdiction attracts and the order passed by the Court below requires interference.

13. Consequently, the instant criminal revision is hereby allowed and the order passed by the Court below dated 22.1.2016 is hereby set aside. The Applicant is directed to remain present before the Court below either in

person or through her counsel on **31.3.2016**. The Court below is directed to proceed further in the matter filed by the Complainant/ Applicant before it as per the above discussed provisions of law. The Court below is further directed to mention the correct nomenclature of the Court for institution of the complaint case and also from whom the inquiry report was sought for, in future. The Applicant shall submit a copy of this order before the Court below for compliance.

14. The Registrar (Judicial) of this Court is directed to send a copy of this order to the concerned Court below through usual and fax modes for compliance. The Registrar (Judicial) is also directed to circulate a copy of this order to all the Judges of the Subordinate Judiciary working in the State for future guidance.

Sd/-
Chandra Bhushan Bajpai
Judge