

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr. M. P. No. 1079 of 2015**

1. Alok Tripathi S/o Manmohan Tripathi, aged about 42 years, R/o 74/5 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
2. Anand Tripathi, S/o Late Pauhari Sharan Tripathi, aged about 60 years, R/o 77/9 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
3. Yogendra Tripathi, S/o Late Pauhari Sharan Tripathi, aged about 58 years, R/o 77/9 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
4. Rajeev Tripathi, S/o Nagendra Tripathi, aged about 40 years, R/o Gurukul Boys Hostel, Nehru Nagar (East), Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)
5. Hariram Tripathi, S/o Shri Kapil Dev Tripathi, aged about 40 years, R/o Krishna Public School Campus, Nehru Nagar, Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
6. Santosh Tripathi, S/o Krishna Mohan Tripathi, aged about 38 years, R/o Krishna Public School Campus, Nehru Nagar, Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
7. Rakesh Tripathi, S/o B. P. Tripathi, aged about 36 years, R/o Modeltown Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)
8. Ravi Tripathi, S/o Ramdayal Tripathi, aged about 46 years, R/o Krishna Public School Campus, Nehru Nagar, Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
9. Prashant Tripathi S/o Yogendra Tripathi, aged about 36 years, R/o 77/9 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
10. Aditya Pandey, S/o Late Kamleshwar Pandey, aged about 36 years, R/o 74/5 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
11. Kuldeep Singh @ Bhangi, S/o Ajeet Singh, aged about 30 years, R/o Vaishali Nagar, Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)
12. Santosh Sahu, S/o Shatrughan Sahu, aged about 25 years, R/o Junwani Basti, Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)
13. Nandu Soni, S/o Chhotelal Soni, aged about 38 years, R/o Through Near Krishna Public School, Nehru Nagar, Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
14. Nandi (Nandi Fabrication Welding Shop), S/o Dhruvtaran Nandi, aged about 40 years, R/o Model Town (Wrongly Mentioned In Aoun) Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)
15. Ashutosh Tripathi, S/o Madanmohan Tripathi, aged about 40 years, R/o 72/4, Nehru Nagar (East), Bhilai, Police Station & Post Supela, Civil & Revenue District Durg (Chhattisgarh)

16. Savita Tripathi, W/o Alok Tripathi, aged about 38 years, R/o 74/5 Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
17. Smt. Anju Tripathi, W/o Rajeev Tripathi @ Kunwar Tripathi, aged about 34 years, R/o Gurukul Boys Hostel, Nehru Nagar (East), Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)
18. Kalyani Tripathi, W/o Hariram Tripathi @ Guddu, aged about 34 years, R/o Through Krishna Public School Campus, Nehru Nagar, Bhilai, Police Station Supela, Civil & Revenue District Durg (Chhattisgarh)

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Versus

1. Smt. Shashi Prabha Yadav W/o Krishna Mohan Yadav, aged about 42 years, R/o 72/3 Nehru Nagar East, Bhilai, Tahsil Durg, Civil Revenue District Durg (Chhattisgarh)
2. State of Chhattisgarh, through District Magistrate, Durg, District Durg, Chhattisgarh

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For Petitioners	:	Shri Manoj Paranjpe, Advocate
For Respondent no.1	:	Shri Mahendra Dubey, Advocate
For Respondent no.2	:	Shri Anupam Dubey, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/07/2016

The challenge in the present petition under Section 482 CrPC is to the order dated 14.10.2015 passed by the 7th Additional Sessions Judge, Durg passed in Criminal Revision No. 254/14 whereby the Revisional Court has partly allowed the revision preferred by the petitioners against the order dated 29.10.2014 passed by the JMFC, Durg to the extent of holding that registration of the complaint for the offence under Sections 354 and 148 is not made out and therefore to that extent it is quashed. At the same time the Revisional Court has upheld the decision of the JMFC in ordering of registering the

complaint for the offence under Sections 294, 323, 427, 452 and 506B of IPC.

2. Counsel for the petitioners submits that it is primarily a dispute of civil nature between the parties. The dispute revolves around the property in respect of plot no.72/2 situating at Nehru Nagar, Bhilai East. According to the counsel for the petitioners, the said property was purchased by petitioner no.1 from the original owner Kulwant Kaur vide registered sale deed dated 05.03.2013 and since then the petitioner no.1 has been paying taxes and other dues payable for the use of the said property and he has also taken possession of the said property.

3. Subsequently, a civil suit was filed by respondent no.1/complainant before the 6th Civil Judge, Class-II, Durg on 30.03.2012 seeking for declaration of possession over the suit property and the same is still pending. In due course of time, there was also a proceeding under Section 145 CrPC between the parties which is pending. According to the petitioners, the respondent no.1 had filed a false and fabricated complaint against the petitioners seeking for registration of a complaint under Sections 147, 148, 506B, 323, 427, 452, 354, 294/34 of IPC. On the basis of which, the learned Magistrate subsequently ordered the concerned Police Station to inquire into the matter and submit a report. On 25.07.2014 the Police Authorities vide Ex.P-2 submitted a report stating that the dispute primarily appears to be a civil dispute in respect of the possession of the property and that the respondent no.1 in spite of specific notice being given to her was not able to produce any document pertaining to title and possession over the said property.

4. Later on, the Court below proceeded with the complaint by recording the statement of the complainant on 13.03.2014 wherein the complainant has made a specific allegation against the petitioners herein and has also produced video recording in respect of the overtacts committed by the petitioners on 04.04.2013. There was also a specific allegation of assault committed by the petitioners on the complainant. Based on the said statement of the complainant, the JMFC vide order dated 29.10.2014 ordered for registration of the complaint for the offence under Sections 148, 506B, 294, 323, 427, 452 & 354 of IPC.

5. This order dated 29.10.2014 was put to challenge by the petitioners before the 7th Additional Sessions Judge, Durg in Criminal Revision No. 254/2014. After considering all the submissions put forth by the counsel for the parties and also considering the evidence brought on record, the Revisional Court vide order dated 14.10.2015 partly allowed the revision to the extent of registration of the offence under Sections 354 and 148 IPC was quashed, however, the registration of the offence under Sections 294, 323, 427, 452 and 506B of IPC was maintained. It is this order dated 14.10.2015 against which the present Cr.M.P. has been filed by the petitioners.

6. The foremost contention of the counsel for the petitioners is that the entire contents of the complaint as well as the statement made by the complainant itself would clearly reflect that no criminality spell out from the said complaint and it is purely a civil dispute between the parties. According to the counsel for the petitioners, it is a case where the respondent no.1/complainant does not have any documentary proof to establish title and ownership over the said property. On the contrary, the petitioner no.1 has a registered sale deed in his favour on

the basis of which he has taken possession over the said property. He submits that the matter is a civil dispute is established from the fact that there is a civil suit filed by the respondent no.1/complainant against the petitioners which is pending and there is also a proceeding under Section 145 of Cr.P.C. pending before the Court below. Therefore, in the given facts and circumstances of the case, the two Courts below ought not to have ordered for registration of the complaint.

7. Counsel for the petitioners also assails the impugned order on the ground of the same being a non speaking order. He submits that a perusal of the order dated 29.10.2014 itself would reflect that the same has been passed in a mechanical manner without application of mind. He submits that the Court below ought to have recorded some reasons on the basis of which prima facie it could be specified that there was sufficient basis for registration of the complaint and for want of such necessities the registration of the complaint is bad in law. He relies upon the judgment of the Hon'ble Supreme Court reported in (2015) 4 SCC 609 (Sunil Bharti Mittal Vs. Central Bureau of Investigation)

8. Counsel for the petitioners further submits that even the Revisional Court has committed an error of law rejecting the complaint except for quashing of the registration of the complaint for the offence under Sections 354 and 148 of IPC and also not considering the submissions of the petitioners in its correct perspective. He further relied upon a decision of the Supreme Court in the case of Rajib Ranjan & Others v. R. Vijaykumar reported in (2015) 1 SCC 513 wherein the Supreme Court has held that if a matter is essentially of a civil nature and has been given a cloak of criminal offence, the High Court would be justified in quashing proceedings in exercise of its powers under Section 482 of CrPC. He submits that the complainant in her

statement has specifically narrated the role played by each of the accused persons and even if that is taken into consideration, the offence under Section 452 IPC is not made out against the petitioners. Thus, counsel for the petitioners prayed for quashment of the impugned order.

9. Per contra, supporting the registration of the complaint counsel appearing for the respondent no.1/complainant submits that reading of the complaint itself would primarily establish the fact that there was sufficient material produced by the complainant both in the complaint as well as in the statement which was recorded before the Court below to establish the incident to have occurred and taking note of this fact, the JMFC had ordered for registration of the complaint on 29.10.2014. He submits that the order passed by the Magistrate cannot be said to be a non speaking order to the extent that the Court below specifically in its order has held that the entire complaint and the statement of the complainant were taken note on the basis of which prima facie the Court was satisfied that an incident had occurred and only then, the Court had ordered for registration of the complaint. Even otherwise, all the contentions and submissions put forth by the counsel for the petitioners in the present petition have already been raised before the Revisional Court which also threadbare had considered all these contentions and found them to be of no good merit and therefore had turned down. Once the Revisional Court has already exercised the revisional power so far as the registration of the complaint is concerned, this Court cannot go into the merits of the case and conduct an enquiry threadbare throwing all the averments made by the complainant invoking the extraordinary powers conferred upon it under Section 482 CrPC.

10. Counsel for respondent no.1 further submits that the Court below has also taken note of the CD produced by the complainant who had recorded on her mobile the entire incident that took place on 04.04.2013 at the premises where the complainant was residing. He further submits that there is a proceeding under Section 145 CrPC itself is sufficient indication that there was a chance of law and order disturbance. Hence, keeping in view all this, the impugned order passed by the Court below does not warrant any interference.

11. Having considered the contentions put forth by the counsel appearing on either side and on perusal of the record what prima facie appears to the notice of this Court is that a complaint had been lodged by the respondent no.1/complainant on 23.08.2013 wherein there was a specific allegation against the petitioners, and the complainant had also narrated the specific act played by each of the accused persons. Based on which, subsequently the statement of the complainant was recorded before the Court below wherein also there was a consistent stand taken by the complainant and she had narrated the same facts as has been reflected in the complaint.

12. So far as the registration of the complaint is concerned, all that the Magistrate has to look into is that on the basis of the complaint and the statement recorded by the complainant whether prima facie material is available on record for registration of a complaint or not. In the instant case, if we take note of the facts and circumstances of the case particularly the contents of the complaint and the statement of the complainant, it clearly depicts that on 04.04.2013 all the petitioners had in fact reached the disputed property and it is alleged that each of the petitioners had conducted themselves in a manner which according to the complainant is an offence under the provisions of IPC. Another

aspect is that the entire episode has been recorded by the complainant in her mobile which was placed before the Magistrate in the form of a CD and it is also referred to in the statement of the complainant, which prima facie shows that there was sufficient material available to the magistrate for registration of the complaint. From the perusal of the complaint and the statement of the complainant recorded before the Court below, it cannot be said that the contents are incorrect and ought not to be believed particularly taking note of the dispute between the parties in respect of landed property leading to the proceeding under Section 145 of CrPC.

13. So far as the law in respect of the powers under Section 482 of CrPC is concerned, the Court shall not conduct a threadbare enquiry. The law so far as the scope of interference with the order of registration of a complaint or framing of charge is concerned, it is by now well settled in catena of decisions by the Hon'ble Supreme Court. In the Case of MCD v. Ram Kishan Rohtagi¹ the Supreme Court has held that the inherent power under Section 482 CrPC should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without addition or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. Further in the case of State of Haryana v. Bhajan Lal² the Supreme Court has held that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. Recently again relying upon the above two

¹ (1983) 1 SCC 1

² 1992 Supp (1) SCC 335

judgments the Supreme Court in the case of Vinod Raghuvanshi v. Ajay Arora reported in (2013) 10 SCC 581 has taken the similar stand and has held that “at this stage the High Court cannot analyze and meticulously consider the evidence and anticipate whether it will end up in conviction or acquittal.”

14. So far as the judgments cited by the petitioners are concerned, in the case of Sunil Bharti Mittal (supra), the entire facts of the said case are on different factual background and the ratio laid down by the Supreme Court in the said case cannot be made applicable in toto in the nature of allegation made by the complainant in the present case. So far as the case of Rajib Ranjan (supra) is concerned, it would be distinguishable for the simple reason that the factual matrix of the said case is entirely different from the facts of the present case. Even otherwise, the Supreme Court in more than couple of cases has held that just because the case of the dispute appears to be of civil in nature by itself would not denude the Court of taking cognizance of a Criminal offence.

15. For the foregoing reasons, this Court is of the opinion that the Court below has not committed any error on law or on facts while passing the impugned order nor is there any infirmity or illegality in passing of the said order.

16. Thus, the instant Cr.M.P. being devoid of merit is accordingly rejected.

Sd/-

**(P. Sam Koshy)
JUDGE**