

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 522 of 2016**

Shrawan Kumar Nirmalkar S/o Shri Rupchandra Nirmalkar Aged About 42 Years Posted As Sarpanch, Gram Panchayat Kargi Khurd Kota, R/o Kargi Khurd Kota, P.S. Kota, Civil & Revenue District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Arun Trivedi S/o Shri Awadh Bihari R/o Kargi Khurd, P.S. & Tahsil Kota, District Bilaspur, Chhattisgarh.

2.State Of Chhattisgarh Through The District Magistrate, Bilaspur, Chhattisgarh.

-----Respondents

For Petitioner:	Mrs. Madhu Nisha Singh, Advocate.
For Respondent/State:	Mrs. M. Asha, Panel Lawyer.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

1.8.2016

1. The present Petition has been filed assailing the order dated 11.3.2016 passed in Criminal Revision No.unregd/2016. Vide the said order, the Revisional Court has rejected the Revision preferred by the Petitioner whereby the JMFC, Kota, Distt. Bilaspur in Criminal Case No.Unregd/2012 dated 16.11.2015 refusing to accept the final report submitted by the police authorities of P.S. Kota in Crime No.355/2010 under Section 173 Cr.P.C , remitting it back to the police authorities for further investigation and to submit the final report.

2. The facts relevant for the adjudication of the present Cr.M.P are that one Arun Trivedi, the Complainant had lodged a First Information Report against the Petitioner and other accused persons before P.S. Kota, Distt. Bilaspur alleging offence under Sections 420, 467, 468 and 471 IPC. Brief nature of allegation is that the accused persons i.e. the present Petitioner has

obtained a crop loan from the Chhattisgarh Gramin Bank, Branch Kargikala for an amount of Rs.50,000/-. It is said that the said crop loan was obtained on the basis of fake documents in respect of the land which was shown to have been cultivated by him for obtaining loan. The allegation is that on verification, the documents regarding land on the basis of which crop loan was received was found to be fake and that the land did not belong to the Petitioner herein but was registered in the name of the Government and in the revenue records, it was shown as “छोटे झाड़ का जंगल”. The police authorities, in due course of time, got the matter investigated. The police authorities also submitted a report after getting an approval from the then prosecution Officer, Kota that no offence is made out against the alleged accused persons in the said complaint and in the absence of cogent evidence, a closure report was sent with due approval for closure from the Superintendent of Police, Bilaspur.

3. The Magistrate, on 16.11.2015, found that the final report submitted by the police authorities was based upon the enquiry report conducted in a disciplinary enquiry initiated by the Department and which could not have been the basis for deciding whether any Criminal case is made out against the accused persons. The Magistrate, thus refused to accept the closure report submitted by the police authorities and further sent it back to the police authorities for fresh further investigation and to submit a final report thereafter.

4. This order dated 16.11.2015 was put to challenge by the Petitioner before the Revisional Court i.e. the Sessions Judge, Bilaspur vide the Criminal Revision Unregd/2016 and the Revisional Court also after considering the submissions of the Revisioner, reached to the conclusion that there was no illegality or infirmity on the part of the Magistrate in refusing to

accept the closure report and for sending the same for further investigation and final report vide the impugned order dated 11.3.2016.

5. It is this order which has been assailed in the present Cr.M.P.

6. According to learned Counsel for the Petitioner, the direction of the Magistrate to the police authorities for submitting a final report is without jurisdiction. Further, it was also submitted that there was no prima facie case made out against the Petitioner from the records that were available in the case diary and therefore, the closure report was submitted and there was no occasion for the Magistrate to have refused the said final report in the absence of any substantive material and to order further investigation. It was also submitted that the power to further investigate may not be questionable but the Magistrate directing for submitting of the final report is definitely without jurisdiction and in excess of his powers. She further submits that from the entire documents available in the case, there is no document whatsoever to show that the Petitioner has used fake and fraudulent document for getting the crop loan from the Gramin Bank. She also submits that there was even no material with the police authorities to show that the Petitioner, at any point of time, defrauded the Bank after obtaining the crop loan and there are reports to show that the entire loan amount has in due course of time, been repaid and thus prayed for the quashing of the impugned order.

7. Learned State Counsel opposing the Petition submits that there is no strong case made out by the Petitioner calling for interference with firstly the order of the Magistrate and secondly by the Revisional Court. Learned State Counsel referring to provisions of Sections 173(3) and 173(8) clearly submits that it is well within the powers of the Magistrate to refuse to accept the report submitted by the police authorities and it is also within the power of

competence of Magistrate to issue directions for further investigation.

According to the State Counsel, once if the Magistrate has been empowered with the said power and it has been exercised, the same cannot be held to be bad in law. Learned State Counsel, on merits of the case also submits that prima facie the Complainant has levelled serious allegations against the Petitioner of obtaining crop loan from the Gramin Bank on the basis of fake and fraudulent documents. The police authorities ought to have verified the documents relied upon by the Petitioner in obtaining the crop loan and to reach to a conclusion whether the averments made in the said application for grant of crop loan were correct. In the absence of a finding to that effect or an investigation in this regard, the Magistrate was fully justified in remitting the matter to the police authorities for further investigation and thus the State Counsel prayed for the rejection of the Cr.M.P.

8. Considering the submissions made by learned Counsel for the parties and on perusal of the record, this Court is of the opinion that prima facie the report submitted by the police authorities seeking for closure of the case does not appear to be based on a strong footing. The police authorities should not have relied upon an enquiry report of the Tahsildar but rather ought to have conducted an independent investigation on the allegations levelled.

9. A plain reading of the complaint filed by Respondent No.1 would clearly indicate the specific nature of allegation and if that complaint is taken note of, then the investigation is also very clear and if the police authorities do not perform their duties in that line or when the Magistrate found that the investigation and the report submitted by the police authorities is not prompt under Sections 173(3) as also 173(8), the Magistrate can send the matter back for further investigation.

10. Thus, in the opinion of this Court, the two Courts below have not committed any error of law or of facts neither does the order reflect any infirmity or illegality while reaching to the said conclusion. Ultimately it is only an order of further investigation which has been directed by the Magistrate and the reports which the police authorities would be submitting after the further investigation would not in any manner be the final report as the final authority is the Magistrate himself who has to decide whether the report submitted by the police authorities is proper and justified and the investigation conducted also in its correct perspective.

11. Thus, only because the Magistrate has ordered for submission of a final report after further investigation would not by itself make the entire order vitiated, neither can it be said to be illegal in any manner.

12. Thus, for the foregoing reasons, this Court is of the opinion that the instant Cr.M.P. being devoid of merits, the same deserves to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)

JUDGE