

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M.P. No. 1078 of 2015**

- Manti Sahu W/o Mahesh Ganjeer Aged About 35 Years R/o Vill. Belgaon, P.S. & Tah. Dongargarh, Distt. Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

1. Seema Rajput Constable Posted At P.S. Dongargaon, Distt. Rajnandgaon, Chhattisgarh.
2. Sohadra Sohakar Constable, Posted At P.S. Dongargaon, Distt. Rajnandgaon, Chhattisgarh.
3. The Then S.D.O.P. Ambagarh Chowki, Distt. Rajnandgaon, Chhattisgarh.
4. Kailash Bajpai The Then S.H.O. Dongargaon, Distt. Rajnandgaon, Chhattisgarh (Since Deceased).
5. Dinesh Gandhi President, Zila Panchayat Rajnandgaon, Chhattisgarh.
6. State Of Chhattisgarh Through District Magistrate, Rajnandgaon, Chhattisgarh.

----Respondents

For Petitioner

Shri Keshav Dewangan, Advocate.

For Respondent/State:

Shri O.P. Sahu, Govt. Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****26/09/2016**

1. The present Petition under Section 482 Cr.P.C. has been filed by the Petitioner-complainant against the order dated 09.10.2015 passed by the Additional Sessions Judge (Atrocities), Rajnandgaon in Criminal Revision No. 32/2015.

2. A brief fact relevant for adjudication of the present dispute is that the Petitioner complainant filed a complaint before the Judicial Magistrate, First Class (JMFC), Rajnandgaon for the offence punishable under Section 294, 323, 166, 167, 467, 469, 466, 192, 217, 218, 219, 500 and 354 read with Section 34 IPC. According to the Petitioner she was president of Dongargarh Gramin Mahila Morcha and that she married to one Mahesh Ganjeer. That on account of certain dispute that arose between the Petitioner and her husband Mahesh Ganjeer she went to lodge a report at Police Station Dongargarh and during the course of investigation it is submitted that the dispute between the husband and wife is said to have resolved and they left the police station. After some time it is said that the dispute between the husband and wife again erupted and she again went back to the Police Station to lodge a report but it is said that the Respondent No.4 refused to lodge the report. Upon which she made written complaint in this regard to the Superintendent of Police, Rajnandgaon and again a compromise was struck between the husband and wife and the matter was closed. Later, on 26.08.2009 again a report was lodged in respect of the husband Mahesh Ganjeer for assaulting the complainant and it is said that the husband Mahesh had also put a lock in the house and was not permitting the complainant Petitioner to enter into the house and when she asked husband Mahesh to let her in he is said to have refused and threatened her for dire consequences. Later on, at the instance of the husband Mahesh few police personnel came in a van

and took the Petitioner complainant along with them. In the Police Station it is said that the Respondent No.4 who is since deceased is said to have asked two of the Police personnel posted in the Police Station to assault the complainant so as to teach her a lesson by which she should learn as to who the police personnel are. As per the instruction of Respondent No.4 she was also physically manhandled at the hands of police personnel and it is said that she was also being forced her for signing certain document of agreement which when she refused she was again assaulted by the police personnel. Later on, it is said that the police authorities intimated the complainant that since her husband refused to keep her with him the Police authorities as such cannot do anything and she would have to seek other recourse available to her. She again reported the matter to the Superintendent of Police, Rajnandgaon where also she did not get a positive response. Meanwhile, it is said that Respondent No.4 is said to have organised a press conference and in the course has tried to tarnish the image of the complainant by making of a sort of false and frivolous allegations and also provided fictitious news for publication. This act on the part of the Respondent forced her to file complaint before the Chief Judicial Magistrate, Rajnandgaon and the Magistrate after taking into consideration the statement of the Petitioner Complainant, reached to the conclusion that Respondents 2, 3 and 5 are all firstly employees of State Government and secondly the allegation that are made, are all said to have been performed in the course of discharge of their official duties, that prior

sanction from the State Government would be mandatory as per Section 197(1)(b) of the Cr.P.C. and accordingly adjourned the matter awaiting for a prior sanction being obtained for initiating prosecution vide its order dated 09.01.2013. Against the said order dated 09.01.2013 the Petitioner had preferred a revision petition and the Revisional Court also vide its order dated 22.10.2013 rejected the same upholding the view of the trial Court of requirement of sanction for prosecution of the Respondents No. 2,3 and 5.

3. Subsequently, the Petitioner moved an application for obtaining grant of sanction and she could not obtain the same. The Trial Court when the matter was taken up for further hearing on 24.02.2014 reached to the conclusion that the since a sanction which is required under Section 197(1)(b) of the Cr.P.C. having not obtained, the complaint was dismissed.
4. The said order dated 24.02.2014 rejecting the complaint by way of Revision before the Revisional Court i.e. Additional Sessions Judge (FTC), Rajnandgaon where the case was registered as Criminal Revision No. 32/2015. Now, the Revisional Court also has vide its order dated 09.10.2015 dismissed the Revision Petition upholding the order of the Magistrate holding for want of sanction under Section 197(1) (b) CrPC the complaint was dismissed and the trial Court has thus not committed any illegality or an error of law while deciding the same.

5. Learned Counsel for the Petitioner submitted that the Court below failed to properly appreciate the provision of Section 197(1)(b) CrPC and has passed order in a mechanical manner. According to the Counsel for the Petitioner the nature of the allegation stipulated in the complaint and also what has been made in the statement recorded at the time of registration of the complaint clearly discloses the criminal act which has been committed by the police authorities and therefore requirement under Section 197(1) (b) would not be applicable in the given facts of the case.
6. It was further contended by the Applicant that the act on part of the Respondents clearly suggest use of criminal force and also act of tarnishing image of the complainant using coercion against the Petitioner complainant for obtaining signature are all would not in any manner fall within the purview of the official duties and therefore requirement of sanction is not necessary. It was lastly contended by the Petitioner that it is the case where the Petitioner had in fact applied for grant of sanction from the State Government but since the State Government has not accorded any sanction the Petitioner can not be left remedy less for redressal of her grievance and for initiating criminal case against the Respondents.
7. In support of his contention Learned Counsel for the Petitioner relies upon the decision of the Supreme Court in case of **Inspector of**

Police and another v. Battenapatla Venkata Ratnam and another

reported in 2015 AIR SCW 3284 whereby the Supreme Court in paragraph-11 has held under:

“11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only.”

8. Learned State Counsel however opposing the Petition submits that the two Courts below have not committed any error of law while rejecting the complaint as well as Revision Petition filed by the Petitioner complainant. According to the State Counsel the entire allegation levelled against the private respondents are in fact act which have been undertaken during the course of discharge of their official duties. According to him the statement of the complainant itself clearly reflects that the allegation levelled is of that time, when the complainant had gone to the police station for registration of the complaint against her husband and thus it clearly reflects that there were certain act which the authorities otherwise were required to perform in respect of the complaint made by the complainant. Thus, it amply proves the act on part of the private respondents to be one which would fall in the course of discharge of official duties and thus prayed for rejection of the CrMP.

9. Having considered the rival contention put forth on either side and also taking into consideration the statement in the record particularly the statement which has been recorded at the time of registration of the complaint what clearly reflects is that on each of the occasions it was the complainant who had gone to the police station where the incident alleged to have occurred. It is not the case of the complainant that the police authorities have done something which was without a complaint or the authorities themselves had suo moto acted in the manner. The statement of the complainant as well as contents of the charge-sheet clearly reflects that the police authorities had acted upon either at the instance of the husband of the Petitioner, Respondent No. 5 or at the instance of the Respondent No.4. Registration or Non-registration of the complaint is primarily the official discharge of duties. It is the power which has been conferred upon the authorities for manning the police station and which they have to do after proper appreciation of the contents of the complaints.
10. So far as the judgment cited by the Petitioner is concerned the facts in the said case is entirely different where the allegation is that of cheating, fabrication and also allegation of amassing huge monetary gains, which is not the facts of the present case. Thus, the judgment of the Supreme Court is distinguishable on its facts.
11. The nature of the allegation levelled would clearly reflect that it was

in the discharge of their official duties and that it is further pertinent to mention that the Respondent No.4 is the person against whom the main allegation has been levelled and who has since expired. Thus, so far as the other private respondents are concerned Respondent No. 2 & 3 the allegation would purely fall within the ambit of discharge of official duties. Thus, this Court has no hesitation in reaching to the conclusion that the two Courts below have not committed any error of law nor has there is any illegality or infirmity in the two orders.

12. Thus the Cr.M.P. in the given facts and circumstance of the case deserves to be and is accordingly rejected.

13. However, our reluctance to entertain the present Cr.M.P. would not preclude the right of the Petitioner to approach the authorities for appropriate action against the present Respondents in the event if she obtains sanctions for prosecuting them as is required under the provisions of Section 197(1) (b) Cr.P.C at a later stage.

14. With the aforesaid observation the Cr.M.P. stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE