

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 281 OF 2016

- Dhirendra Singh S/o Late Chhedi Singh, aged about 61 years, R/o House No. 398, Ward No. 22, Camp-1, Bhilai, Post Supela, Tahsil & District Durg (C.G.)

... Petitioner

Versus

1. Vinod Kumar Verma S/o Late K.S. Verma, aged about 53 years, Assistant Manager, Room No. 258-A, Law Department, Ispat Bhawan, Bhilai Ispat Company Bhilai, Tahsil & District Durg (C.G.)
2. Virendra Dhawan S/o K.L. Dhawan, aged about 50 years, Deputy Manager, C.C.S., Operation, S.M.S. - 2, Bhilai Ispat Company, Bhilai, District Durg (C.G.)
3. Bahadur Sing S/o Chhedi Singh, aged about 57 years, Master Technician, C.H.M. Department, Tahsil & District Durg (C.G.)
4. P.K. Rai, aged about 61 years, Ex-Senior Manager, Department Enquiry Cell, Shed No. 4, Equipment Chowk, Bhilai Steel Plant, Bhilai, Tahsil & District Durg (C.G.)
5. R. Sundaration, aged about 61 years, Ex-General Manager, Vigilance, Bhilai Steel Plant, Bhilai, Tahsil & District Durg (C.G.)
6. State of Chhattisgarh, through the District Magistrate, Durg, District Durg (C.G.)

... Respondents

For Petitioner	:	Mr. Jitendra Gupta, Advocate.
For Respondents 1, 2, 4 & 5	:	Mr. B.D. Guru and Mr. S.R.J. Jaiswal, Advocates.
For Respondent 3	:	Mr. M.K. Bhaduri, Advocate.
For Respondent 6	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/11/2016

1. This matter seems to have been wrongly got tagged along with Criminal Misc. Petition Nos. 383 of 2016 and 1017 of 2016 and therefore it is de-linked and heard separately.
2. The present petition under Section 482 of CrPC has been filed by the Petitioner seeking for quashment of the order dated 15.1.2016 passed by the Additional Sessions Judge, Durg in Criminal Revision No. 0000097 of 2015.

3. Relevant facts for the adjudication of the present petition are that the Petitioner/Complainant was an employee of the Steel Authority of India Limited and was posted at Bhilai Steel Plant, Bhilai. He was working as a Senior Operator-cum-Technician. According to the Petitioner/Complainant, the Respondents No. 1 to 5 in the instant case with *mala fide* intention have got certain documents fabricated and on the basis of the said fabricated and fake documents got the Petitioner being subject to disciplinary proceeding and later on the Petitioner's services were also got terminated. The Petitioner had already preferred department appeal to the higher authorities seeking for reconsideration of his order of termination and which is pending before the higher authorities. In due course of time, he had lodged a complaint under Section 200 of CrPC before the Judicial Magistrate First Class, Durg, which was registered as Criminal Complaint Case No. 2800 of 2015, alleging that the private Respondents initially have got the documents fabricated and upon preparation of these fabricated documents they have used it in the department of the Petitioner and therefore they are liable to be prosecuted and punished for the offence under Section 120-B, 420, 467, 468, 471/34 of IPC.

4. The Judicial Magistrate First Class, Durg initially vide its order dated 4.5.2015 has ordered to register the said complaint for the aforesaid offences. This order dated 4.5.2015 was questioned by the Respondents No. 1 and 2 before the Sessions Court by way of a revision petition which has been registered as Criminal Revision No. 0000097 of 2015. The Revisional Court, i.e., the Additional Sessions Judge, Durg, vide impugned order dated 15.1.2016 reached to the conclusion that the Magistrate Court has shown haste in registration of the complaint whereas the Court below should have applied its mind and should have seriously considered whether any offence against the accused persons *prima facie* is reflected from the

complaint or from the statement of complainant. Thus, setting aside the order dated 4.5.2015 of the Magistrate, the Revisional Court remitted the matter back to the Court below for reappraisal of the evidence and the contents of the complaint and to verify the individual overt-act that as has been alleged is *prima facie* reflected to have been done in the instant case. Moreover, it was also ordered that the Magistrate may also while deciding the matter afresh would keep in mind the fact that there was a serious service related dispute between the Complainant and the private Respondents. The Revisional Court had disposed of the matter with the order of remand after setting aside the order of the Judicial Magistrate First Class, Durg dated 4.5.2015. It is this order dated 15.1.2016 of the Revisional Court which has been assailed by the Petitioner in the instant petition under Section 482 of CrPC.

5. Counsel for the Petitioner assails the impugned order solely on two grounds. First, the Revisional Court does not have any jurisdiction to reconsider the decision of the Magistrate Court in taking cognizance of an offence and second the registration of the complaint being beyond the scope of revisional jurisdiction. The Revisional Court ought not to have entertained the revision petition and should have rejected the same at the threshold itself. The Revisional Court could not have set aside the order of the Magistrate for the reason that the revision petition in fact was filed only by two of the accused persons and the entire registration of the complaint could not have quashed/set aside so far as the other accused persons are concerned. It could at best set aside/quashed qua the two Respondents and not the entire order itself.

6. According to the Counsel for the Petitioner once when the Magistrate Court has ordered for registration of the complaint then the revision petition could not have been filed only on the issue of registration of the complaint

and the same could not have been entertained at all and should have been dismissed at the threshold itself. It was further alleged by the Counsel for the Petitioner that even now that since it is only registration of the complaint, the Petitioner should not be forced to undergo the trauma of facing trial when there are available facts and record before the Trial Court and it is evidently clear from the available materials and record that the registration of the complaint was proper, legal or justified.

7. Counsel for the Petitioner further took the Court through the nature of the complaint and submitted that a bare perusal of the complaint itself would reveal that the Petitioner had made individual allegation in respect of each of the Respondents ascertaining the role played by each of the so called accused persons and the Trial Court had rightly appreciated the same while ordering for registration of the complaint, and therefore it does not warrant any interference and the finding of the Trial Court seems to have not been properly re-appreciated by the Revisional Court which had allowed the revision petition.

8. Counsel for Respondents No.1, 2, 4 & 5 opposing the petition submits that the order passed by the Revisional Court dated 15.1.2016 is quite justified, proper, legal and does not warrant any interference. According to him, the entire complaint case and the act of the Complainant is nothing but a misuse of process of law and process of the Court. It is a case where the Petitioner/Complainant was found to have used fabricated and fake documents for getting employment and when this fact was brought to the notice of the competent authority they had initiated steps for verification of the same and finally on finding those documents to be fake and fabricated, which have been relied upon by the Petitioner in getting the employment with the Steel Authority of India Limited. The employer in turn took a decision of terminating the services of the Petitioner. It was further

contended that just because the Respondents had been instrumental in getting the services of the Petitioner terminated with a vindictive and *mala fide* intention, the Petitioner has with a sheer intention of harassing the Respondents has filed the present false, baseless and frivolous complaint against the Respondents.

9. Counsel for Respondent No.3 also opposing the petition submitted that there was no scope of interfering with the order passed by the Revisional Court as there are specific reasons assigned in the impugned order and since it is a speaking order there is no scope of interference by this Court in exercise of its powers conferred under Section 482 of CrPC. According to Counsel for Respondent No.3 all that the Revisional Court while setting aside the order of the Trial Court has held is that the Trial Court while registration of the complaint should not have acted in a mechanical manner or as a post office receiving and sending complaints. According to him, the Magistrate Court before ordering for registration of the complaint should have first *prima facie* reached to an opinion that the Petitioner appears to have made out a satisfactory case or not. There has to be an application of mind by the Court before it thinks it proper for issuing summons to the accused persons. It is a clear case where the dispute between the parties started because of a disciplinary action initiated against the Petitioner by the management of the Bhilai Steel Plant.

10. In addition, Counsel for the State also opposing the petition submits that it is only an order of remand which has been ordered by the Revisional Court and as such there is nothing prejudicial which has been caused against the Petitioner. According to the State Counsel, in case if the Petitioner is innocent then he should pursue departmental appeals or other forums available to him for assailing the order of termination issued against him. *Prima facie* the Complainant seems to have adopted an arm twisting

method by filing the present complaint so that he can take advantage in departmental remedies that he has been following against the order of termination. The State Counsel further submitted that while exercising the revisional jurisdiction the Court can either *suo motu* or at the behest of either of the parties can issue an appropriate order to meet the ends of justice. The State Counsel also submitted that the Revisional Court in the given facts and circumstances has duly exercised the powers conferred upon it while exercising the revisional jurisdiction and that the Revisional Court also has the power of setting aside the order of the Trial Court and remitted the matter back to the Trial Court for a fresh adjudication.

11. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what clearly reflects is the fact that there being a serious service related dispute between the Petitioner and the private Respondents. The Petitioner has been terminated from his services is also not in dispute. The petition also suffers on merits on the ground that the Petitioner has not been able to establish the fact as to why the Respondents would only implicate the Petitioner alone and that what are the benefits which the Respondents have gained by creation of false documents. In a recent decision of the Supreme Court rendered in the case of **Mehmood UL Rehman Vs. Khazir Mohammad Tunda & Others**, the Supreme Court in paragraphs 23 and 24 has held as under :

“**23.** The steps taken by the Magistrate under Section 190(1)(a) of Cr.P.C. followed by Section 204 of Cr.P.C. should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, *prima facie*, make the accused answerable before the Court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section

203 of Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of Cr.P.C., if any, the accused is answerable before the Criminal Court, there is ground for proceeding against the accused under Section 204 of Cr.P.C., by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of Cr.P.C., the High Court under Section 482 of Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the Criminal Court. To be called to appear before Criminal Court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of Criminal Court shall not be made a weapon of harassment.

24. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204, Cr.P.C., there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of Cr.P.C. so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether the respondents (appellants) are answerable at all before the Criminal Court. There is no indication in that regard in the order passed by the learned Magistrate. We, hence, set aside the order dated 3-4-2007 passed by the Judicial Magistrate First Class, Srinagar and the impugned order passed by the High Court. The matter is remitted to the Magistrate for fresh consideration and further action, if required to be taken in accordance with law.”

12. In the light of the aforesaid decision of the Supreme Court and the fact that there was a service related dispute pending consideration, this Court has no hesitation in reaching to the conclusion that the finding of the Revisional Court dated 15.1.2016 cannot be said to be bad in law or

arbitrary nor it can be said to be an erroneous decision contrary to the settled provisions of law.

13. The petition thus being devoid of merits the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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