

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRIMINAL MISC. PETITION NO. 548 OF 2016**

Smt. Vimla Dubey, W/o Surendra Kumar Dubey, aged about 75 years, R/o Old Sarkanda, Bilaspur, District Bilaspur (C.G.)

... Petitioner**Versus**

State of Chhattisgarh, through District Magistrate, Bilaspur, District Bilaspur (C.G.)

... Respondent

For Petitioner	:	Mr. G.I. Sharan, Advocate.
For Respondent	:	Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board**20/10/2016**

1. By way of the present petition under Section 482 of CrPC, the Petitioner intends to assail the order dated 3.3.2016 passed by the 9th Additional Sessions Judge, Bilaspur in Criminal Revision No. 31 of 2016.
2. By the said order dated 3.3.2016, the Court below has rejected the revision preferred by the Petitioner against the order dated 30.4.2015 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Case No. 6425 of 2015 by which the learned Judicial Magistrate First Class has ordered to file a complaint in the Court of learned Chief Judicial Magistrate, Bilaspur against the present Petitioner for taking cognizance of offence in respect of an act of tampering with the copying stamp on a certified copy of an order in a proceeding under Section 145 of CrPC.
3. Brief facts of the case are that there was a dispute between the Petitioner and the Complainant, Rajnish Sahu, in respect of a property upon which a proceeding under Section 145 of CrPC was initiated by the Sub Divisional Magistrate, Bilaspur who had passed an order on 2.11.2012 in favour of the Complainant, Rajnish Sahu. Against the said order dated

2.11.2012, a revision petition was preferred by the present Petitioner before the 6th Additional Sessions Judge, Bilaspur, which was registered as Criminal Revision No. 109 of 2013. Pending the said revision before the 6th Additional Sessions Judge, Bilaspur, the Complainant, Rajnish Sahu filed an application under Section 340 of CrPC alleging that the Revisioner/ Petitioner has tampered with the copying stamp in the certified copy attached with the revision petition so as to gain advantage of the period of limitation prescribed.

4. The Learned 6th Additional Sessions Judge before whom the said revision was pending and before whom the application under Section 340 of CrPC was filed, took note of the said complaint and passed an order directing the Chief Judicial Magistrate to verify and look into the matter and to submit a report, and for the said purpose he had appointed the Court Reader of his Court, namely, Narendra Singh Chouhan, to present the case before the Chief Judicial Magistrate, Bilaspur. The Chief Judicial Magistrate, Bilaspur forwarded the same to be considered and inquired upon, by the Judicial Magistrate First Class, Bilaspur.

5. In investigation, the Judicial Magistrate First Class, Bilaspur reached to the conclusion that prima facie it has been found that the Petitioner has tampered with the copying stamp attached on the certified copy of the proceeding pending before the Learned 6th Additional Sessions Judge, Bilaspur and held that prima facie it appears that a case for an offence under Sections 193, 463, 466, 471, 474, 120-B and 204 of IPC is made out against the present Petitioner and other persons and further ordered that the matter be placed before the Chief Judicial Magistrate, Bilaspur. As the complaint was ordered to be filed before the Court of Chief Judicial Magistrate, Bilaspur, the learned Judicial Magistrate First Class, Bilaspur

further ordered for the present Petitioner to appear before the Court of learned Chief Judicial Magistrate, Bilaspur on 15.5.2015.

6. This order dated 30.4.2015 passed by the learned Judicial Magistrate First Class, Bilaspur was again challenged by way of a fresh revision petition by the present Petitioner before the Court of 9th Additional Sessions Judge, Bilaspur and the said Revisional Court vide impugned order dated 3.3.2016 has rejected the revision petition affirming the order passed by the Judicial Magistrate First Class, Bilaspur on 30.4.2015.

7. Learned Counsel for the Petitioner submits that the action on the part of the Judicial Magistrate First Class, Bilaspur in issuance of the order dated 30.4.2015 is bad in law firstly on the ground that he was not the authorised person by the 6th Additional Sessions Judge, Bilaspur for filing of the complaint. Further, the Petitioner has also assailed the order on the ground that the learned Judicial Magistrate First Class, Bilaspur has not conducted a proper inquiry before reaching to the prima facie conclusion. It was also contended by the Counsel for the Petitioner that the learned Magistrate has not appreciated the fact that the Petitioner in the instant case is a lady more than 70 years of age and she is a very poor and of rustic background and there is no likelihood of her knowing the intricacies of law to tamper with the copying stamp so as to get an advantage of the limitation as alleged by the Complainant. According to the Counsel for the Petitioner, all these aspects ought to have been taken into consideration by the learned Magistrate before proceeding further and then should have passed an speaking order and such an exercise on the part of the Magistrate is without authority and without proper application of judicious mind and therefore the same deserves to be set aside/quashed.

8. Having perused the records what clearly reflects is that prima facie from the perusal of the records it appears that the authorities concerned had got it verified from the concerned Copying Section and reached to the conclusion that there appears to be certain tampering done with the copying seal and it appears that the said tampering has been done only with an intention of taking advantage of the period of limitation. Further, whether it was the Petitioner who has tampered with the seal or it was some other person is a matter of evidence. Indisputably, this fact cannot be looked into by the High Court at this stage in exercise of its extraordinary powers under Section 482 of CrPC particularly when reaching to a logical conclusion evidence of either side has to be considered which has not been recorded till now before the Court below.

9. As far as the contention of the learned Counsel for the Petitioner regarding the prima facie finding of the learned Magistrate so far as the offences which have been alleged is concerned, those are only prima facie observations which have been made by the learned Magistrate and the same cannot be considered in any manner by any stretch of imagination to be a conclusive finding. In any case, it is observed that the observation so recorded by the learned Judicial Magistrate First Class, Bilaspur should not have an influence on the Court below while reaching to a final conclusion after the evidence is recorded.

10. So far as the contentions on the merits of the case is concerned, without recording of the evidence on either side particularly when the allegation is in respect of tampering of documents, this Court in exercise of its extraordinary jurisdiction would not conduct a roving inquiry or a mini trial to reach to a specific conclusion. Accordingly, this Court is of the opinion that the orders passed by the two Courts below do not warrant any interference at this juncture.

11. The petition is accordingly dismissed. However, it is reiterated that the observations of the Courts below in reaching to a prima facie conclusion should not have an adverse impact while considering the case on its merits after the parties are given an opportunity to lead evidence in respect of their respective contentions.

Sd/-

(P. Sam Koshy)
Judge

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