

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 560 OF 2016

1. Chandra Shekhar Jaiswal, aged about 36 years, S/o Late Murari Lal Jaiswal.
2. Ashwani Jaiswal, aged about 38 years, S/o Late Murari Lal Jaiswal.
Both R/o Mannu Chowk, Tikrapara, Police Station City Kotwali, Bilaspur, Revenue & Civil District Bilaspur (C.G.)

... Petitioners

Versus

1. State of Chhattisgarh, through District Magistrate, Bilaspur, District Bilaspur (C.G.)
2. Akash Jaiswal, aged about 27 years, S/o Late Kunj Bihari Jaiswal, R/o Mannu Chowk, Tikrapara, Police Station City Kotwali, Bilaspur, Revenue & Civil District Bilaspur (C.G.)
3. Chief Manager, National Thermal Power Corporation, Seepat, P.S. Seepat, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Rupesh Shrivastava, Advocate.
For Respondent 1	:	Mr. Ashish Shukla, Govt. Advocate.
For Respondent 2	:	Mr. G.V.K. Rao, Advocate.
For Respondent 3	:	Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/12/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioners assailing the order dated 4.5.2016 passed by the Judicial Magistrate First Class, Bilaspur in an unregistered complaint case pending before it.
2. Vide impugned order dated 4.5.2016, the Court below has entertained the application filed by Respondent No.2-complainant, under Section 91/93 of CrPC, and has ordered the police authorities to register an FIR and to conduct an investigation and thereafter submit a final report or the charge-sheet, as the case may be.

3. Counsel for the Petitioners assailing the said order submits that the Court below has exceeded its jurisdiction while entertaining the said application under Section 91/93 of CrPC which otherwise the Court below could not have done having already exercised the powers which have been conferred upon it under Section 202 of CrPC. According to the Counsel for the Petitioners, the Court below could have ordered for investigation in the instant case before it would have taken a cognizance in the matter, but having already taking cognizance of the case it could not have thereafter ordered for further investigation by the police authorities under Section 156(3) of CrPC. Counsel for the Petitioner placed reliance on the decision of the Supreme Court rendered in the case of *Devarapalli Lakshninarayana Reddy & Others v. V. Narayana Reddy & Others*, 1976 (3) SCC 252, and also on the judgment of this High Court in the matter of *Smt. Rakhi Patel v. State of Chhattisgarh & Others*, 2013 (3) C.G.L.J. 638.

4. According to the Counsel for the Petitioner it is a case where the Respondent No.2-Complainant has lodged a complaint against the Petitioners and other accused persons alleging fraud to have been played by them inasmuch as they have created fake and fabricated documents and have obtained employment with the management of NTPC, Seepat. According to him, the Respondent No.2-complainant has in fact not supported his complaint with any cogent documentary evidence to establish his case and that he has only made a bald complaint before the Court below which the Court below having taking cognizance has called for the report of the police authorities and the police authorities have submitted a report on 3.2.2016 and thus compliance of the provisions of Section 156(3) of CrPC has got completed there itself.

5. According to the Counsel for the Petitioners, the Court below had already ordered for the police authorities to collect informations upon the complaint made by the Complainant. According to the Counsel for the Petitioners, since the police report had come there was no occasion for the subsequent application moved by the Complainant under Section 91/93 of CrPC seeking for calling of the records available with the management of the NTPC, Seepat for the purpose and further investigation in the matter. Thus, according to the Counsel for the Petitioners, the Court below has exceeded its jurisdiction and therefore the order impugned is bad in law.

6. Counsel for the State however opposing the petition submits that it is all in the course of entertaining the complaint lodged by Respondent No.2-complainant that the Magistrate has passed an order. According to the State Counsel, no prejudice whatsoever has been caused by the passing of the said order so far as the Petitioners are concerned. The State Counsel also submitted that it is a case where the allegations against the Petitioners are very serious that of impersonation and also creating false and fabricated documents for the purpose of getting employment at NTPC, Seepat. The State Counsel further submitted that it is a case where the Respondent No.2-Complainant had initially lodged a complaint on 22.9.2015 to the Magistrate under Section 156(3) of CrPC on which the Magistrate had ordered for a report to be submitted by the concerned police station. Accordingly, the concerned police station also after due investigation had submitted a report on 3.2.2016. It is subsequently that the Complainant moved an application under Section 91/93 of CrPC for the calling of the original records on the basis of which the allegations levelled against the Petitioners and other accused persons could have been proved or established and accepting the said application, the Court has ordered for the registration of an FIR and to conduct an enquiry. The State Counsel thus submits that the said order so

passed by the Court below on 4.5.2016 is not in any manner infirm or illegal considering the legal position as it stands.

7. Counsel for the State at this juncture refers to the decision of the Supreme Court rendered in the matter of *Srinivas Gundluri & Others v. Sepco Electric Power Construction Corporation & Others*, 2010 (8) SCC 206. Referring to paragraphs 17 and 23, the State Counsel submits that it is not a case where just because the Magistrate having called for a report of the police authorities would be seized of its power for ordering for further investigation if required. It is a case where in the given factual matrix of the case after the police authorities submitted a report, the Complainant felt that since the original records were available with the management but it would be required by the police authorities to obtain the same for proper investigation and when the same was found to be convincing the Court below had ordered for the registration of the complaint and for verification of the veracity of the documents which are available with the management of NTPC, Seepat on the basis of which the employment was obtained including that of the Petitioners who it is alleged to have got the employment on the basis of fake and fabricated documents. The State Counsel thus prays for the rejection of the present petition.

8. Having considered the rival contentions put forth on behalf of either side and on perusal of the records what clearly reflects from the order is the fact that though the Magistrate had initially on receiving a complaint had ordered for the submission of a report by the police authorities and which the police authorities have also submitted on 3.2.2016, however the Complainant subsequently moved an application seeking for the production of the original documents lying with the Respondent No.3 for its verification so as to adjudicated upon the allegations which have been levelled against the Petitioners. This Court in the given facts and circumstances of the case

particularly, in the light of the judicial pronouncement made by the Supreme Court in the case of *Srinivas Gundluri* (supra) does not find any illegality or infirmity on the part of the Magistrate in ordering so.

9. The present Criminal Misc. Petition being devoid of merits to the said extent stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

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