

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 720 OF 2016

1. Sunil Satpati, aged about 37 years, S/o Ram Prashad Satpati, R/o Village Amlipadar, P.S. Amlipadar, District- Gariyaband (C.G.)
2. Akhtar Memon Khan, aged about 42 years, S/o Haroom Usman Memon, R/o Village Amlipadar, P.S. Amlipadar, District Gariyaband (C.G.)

... Petitioners

Versus

State of Chhattisgarh, through Police Station Deobhog, District Gariyaband (C.G.)

... Respondent

For Petitioners	:	Mohd. Afroz Athar, Advocate.
For Respondent-State	:	Mr. Ashish Shukla, Govt. Advocate and Mr. V.K. Netam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/11/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioners seeking for quashment of the registration of an FIR at Police Station Deobhog, District Gariyaband which has been registered as Crime No. 98 of 2016.
2. Counsel for the Petitioners at the outset submits that he is primarily aggrieved by the registration of an FIR against the Petitioners for the offence punishable under Sections 384 of Indian Penal Code ('IPC' in short) and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act) ('the SC/ST Act' in short). He submits that the registration of the FIR for the said offences is per se illegal and *prima facie* the offences are not made out in the light of the complaint which has been lodged before the police authorities. He further submitted that this Court in exercise of its powers under Section 482 of CrPC should curb such misuse of exercise by the police authorities in framing those charges with a

malafide intention of arresting the Petitioners for non-bailable offence and forcing them to undergo the trauma and agony of trial and further proceedings. He also submitted that if this Court at this juncture goes into the contents of the FIR itself it would *prima facie* establish that the offence under Section 384 of IPC and Section 3(1)(x) of the SC/ST Act is not made out and therefore appropriate directions should be given to the Respondent to ensure that the offences which are not made out against the Petitioners should not be registered against them and that the offences which have been registered against the Petitioners under the said Sections may be set aside/quashed.

3. Counsel for the State however opposes the petition on more than one ground. He submits that it is too premature a petition and which should not be entertained by this Court at this preliminary stage. According to the State Counsel the date of incident is of 10.5.2016 and the present petition has been filed absolutely in less than about 30-35 days time, that is, on 17.6.2016. He further submitted that the present case is at the investigation stage and the charge-sheet has not been filed and that all the contentions put forth by the Counsel for the Petitioners are all matters of apprehension and if in the course of the investigation if the police authorities find that no such offences have been made out against the Petitioners under Section 384 of IPC and Section 3(1)(x) of the SC/ST Act, they should not have any assumption or presumption that yet the charge under Section 384 of IPC and Section 3(1)(x) of the SC/ST Act would be levelled against them. In furtherance to his contentions, the State Counsel objects to the maintainability of the present petition on the ground that even if the police authorities filed a charge-sheet against the Petitioners for the offences which *prima facie* are not made out as has been contended by the Counsel for the Petitioners, they have an alternative remedy of

approaching the Court by moving appropriate application seeking discharge under Section 227 of CrPC. In addition, the accused persons can also move an application under Section 216 of CrPC at the appropriate stage before appropriate Court. State Counsel thus prayed that the petition being totally misconceived and premature at this juncture deserves to be dismissed.

4. Having considered the contentions put forth on either side and taking into consideration the fact that the case is at the very preliminary stage of the investigation where the charge-sheet also has not been filed and only on the basis of a complaint the FIR has been lodged, the contentions of the Petitioners cannot be accepted.

5. It is a settled position of law that the offences for which the case has been registered in the FIR need not be the Sections which ultimately are levelled against the accused persons while the charge-sheet is filed. While the charge-sheet is filed the police authorities go through the documents and materials collected in the course of the investigation and then decide the offence which is said to have been committed by the accused person and if the contentions of the Petitioners are to be believed that the offence under Section 384 of IPC or for that matter under Section 3(1)(x) of the SC/ST Act is not made out, this Court does not see any good reason why the police authorities would still file the charge-sheet implicating the Petitioners for the offences for which there are no *prima facie* materials. In addition, this Court is also inclined to accept the objections put forth by the State Counsel in respect of the fact that the Petitioners in the given facts and circumstances of the case, if they are ultimately charged for the offences for which they are apprehending as on date only on the basis of FIR being registered, they have a remedy available by moving appropriate

application seeking for discharge under the appropriate provisions of law before the appropriate Court.

6. Thus, for the aforesaid reasons this Court does not find any strong case has been made out calling for any interference or a direction to be issued to the Respondent. The petition thus fails and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
Judge

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