

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(Cr.) No. 66 of 2017**

Adiram Singh S/o Shri Kunjilal, Aged About 44 Years Caste-Jatav (S.C.), Occupation Govt. Employee, Presently Posted As A S I At M T Workshop, Lalbag, Jagadalpur, District Jagadalpur (Bastar), Permanent R/o Qr. No. A-6, New Zameen, Mana Camp Raipur, District Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. The State Of Chhattisgarh Through : The Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. The Director General Of Police, Office Of The Director General Of Police, Naya Raipur (Chhattisgarh)
3. The Collector, Raipur, District Raipur, Chhattisgarh
4. The Superintendent Of Police, Raipur, District Raipur, Chhattisgarh
5. The Commandant, 3rd Batalian Amaleshwar Raipur, District Raipur (Chhattisgarh)
6. The Police Station City Kotwali, Raipur, Through The Officer In Charge Of Police Station City Kotwali Raipur, District Raipur (Chhattisgarh)
7. Ramdev Rao Makode S/o Shri Chandrabhan Makode Aged About 56 Years Occupation Govt. Employee, Presently Posted As S I At M T Workshop, Amaleshwar, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For petitioner – Shri Roop Naik, Advocate.
For Respondent/State –Shri Vinod Tekam, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order****10/03/2017**

1. This petition is filed to quash the FIR dated 3/02/2016 wherein report was made by one Namdev Rao Makode that on 25/12/2015 Namdev Rao Makode went to record his presence in MT Pool

Raipur, at that time one Sanjay Sarthi who was in computer was working, during such time he was reading paper and the present petitioner Adiram Singh was looking after official papers and was putting his signature. All of a sudden petitioner Adiram Singh started assaulting by way of sleeper/shoe and abused and stated take charge and also assaulted on his head by way of shoe. When he tried to run away from there, he was followed by the petitioner and he fell to the ground. Thereafter, he was assaulted by way of kick. Thereafter, other officials came and intervened and he was saved.

2. Learned counsel for the petitioner would submit that there is no sanction under Section 197 of Cr.P.C. has been obtained. He further submits that one Sanjay Sarthi who is independent witness has not been examined, therefore entire prosecution is bad and FIR be quashed.

3. Perused the documents as also the report. Report states that the petitioner assaulted by way of shoe on the head of the complainant Namdev Rao Makode when he tried to flee away, he fell down and he was kicked on his body. Further also reading statement under Section 161 of Cr.P.C. wherein positive allegations have been levelled against the petitioner. Considering the report and the statement recorded under Section 161 of Cr.P.C. defence raised by the petitioner at this stage cannot be considered that why statement of independent witness have not been recorded and consequently entire FIR and report thereafter are forged. This court at this stage while exercising power under Section 482 Cr.P.C.

cannot go into mini trial of this case which is to be adjudicated by the trial court after examination and cross examination of the witnesses.

4. The Hon'ble Supreme Court in case law reported in **(2013) 10 SCC 581, Vinod Raghuvanshi Vs. Ajay Arora & Others**, at para 30 has held as under:-

30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child," and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an enquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a latter stage."

5. In view of the above, I am not inclined to invoke the extraordinary jurisdiction of this court vested in it under Section 482 of Cr.P.C. to quash the FIR at the threshold.

6. Accordingly, the petition fails and is dismissed at the motion stage itself.

7. It is noted that the court has not expressed any opinion while dismissing the petition.

Sd/-
(Goutam Bhaduri)
JUDGE