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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (Cr.) No. 179 of 2017

Santosh Jain S/o Shri Sampat Lal Jain, Aged About 47 Years R/o Devendra Nagar, Raipur (Chhattisgarh) Civil & Revenue District Raipur.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Superintendent Of Police, District Raipur, Chhattisgarh.
2. The Station House In-Charge, Police Station Civil Lines, Raipur (Chhattisgarh).
3. Abhishek Jain S/o Late Jai Kumar Jain, Aged About 25 Years R/o Kusum Complex, Jain Mandir T V Tower Road, Shankar Nagar, Raipur, Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri B.P. Sharma, Advocate.
For Respondents No.1 & 2/ State	:	Shri Anil S. Pandey, Government Advocate.
For Respondent No.3	:	Shri Amit Singh, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

20.07.2017

1. Heard.

2. Learned counsel for the petitioner submits that this petition under Article 226 of the Constitution of India has been brought seeking directions of this Court with respect to the method and manner of the proceedings on the application filed under Section 156(3) of the Code of Criminal Procedure. He further submits that respondent No.3 – Abhishek Jain filed an application before the Court of Chief Judicial Magistrate, Raipur on 2.8.2016 under Section 156(3) of Cr.P.C. alleging commission of cognizable offence against the petitioner. The Court has simply forwarded the application with an endorsement to register an FIR, investigate and submit a final report. The

petitioner tried to get a copy of the order-sheet of the proceedings drawn against him. On this application, no such order-sheet was found to be recorded by the Court. It is not expected of a Court to draw the proceeding against any person in such a casual manner. Every proceeding has to be methodical and in accordance with law and rules.

3. It is submitted that it was the petitioner who had lodged one FIR against Satish Jain alleging commission of offences under Sections 420, 467, 468, 471, 120B of the Indian Penal Code which was registered in P.S. Gol Bazar on 14.8.2014 and the investigation was carried out. On the basis of this information, charge-sheet has been filed against Satish Jain. Respondent No.3 – Abhishek Jain is the person who was benefited by the alleged offences of cheating and forgery committed by Satish Jain. Hence, as a reaction and as a counter blast, an application under Section 156(3) of the Cr.P.C. has been filed (Annexure – P/2) on a letter dated 2.8.2016 which is totally abuse of process of law.

4. Learned counsel for the respondent submits that there had been a dispute with respect to property which was given to respondent No.3 by the petitioner by settlement deed dated 4.10.1993 on which the mutation of official records was carried out. At that time, Respondent No.3 was a minor and his father had expired, after which his mother remarried in the year 2004. Thereafter, she left him to reside in her new matrimonial home. When respondent No.3 attained majority, he noticed that the petitioner had cheated him by practicing fraud and got the mutation in official record in his favour. Hence, respondent No.3 was compelled to file the complaint.

5. In rebuttal, it is argued on behalf of the petitioner that the so-called family settlement deed was forged. On learning about the forgery and cheating, the petitioner has lodged FIR against one Satish Jain and it has been found by the police in the investigation that the document of settlement deed was forged one. On the basis of which, the prosecution has been lodged against Satish Jain.

6. Looking to the prayer made by the petitioner, there is no requirement to go into the merits of the case as the criminal proceedings initiated against the petitioner has been completed by the submission of final report of closure whereas the criminal proceedings initiated on the FIR lodged by the petitioner is not under question in this petition.

7. Looking to the method adopted by the trial Court, it has to be taken notice of that in **Mrs. Priyanka Srivastava and another v. State of U.P. and others** reported in **AIR 2015 SC 1758**, Hon'ble Supreme Court has held that while exercising the power under Section 156(3) of the Code of Criminal Procedure, the Magistrate shall apply his mind before passing an order for registration of FIR. In view of this principle laid down by the Apex Court, there is certainly requirement on the part of the Magistrate having jurisdiction to pass an order before sending the matter for registration of FIR, to record the reasons for doing so, which will reflect application of mind. For this purpose, there has to be an order on the order-sheet. Even otherwise, any paper filed before a Court has to be acknowledged by recording it on an order-sheet showing the appearance of the party/ counsel and the submission of the documents as it is the practice regularly adopted by the Courts. Hence, for these reasons, looking to the procedure adopted in this

case by the Learned Magistrate, it appears that issuance of direction in this respect is necessary. As the petitioner has not sought any other relief in this petition, this petition is disposed of with a direction that in the event of filing of any application under Section 156(3) of the Cr.P.C. the Magistrate shall be duty bound to pass an order on the order-sheet showing the conclusion drawn on the application, either allowing it or rejecting it, in compliance with the guidelines laid down in **Priyanka Srivatava's case** (supra).

8. In view of above, this petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi