

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 112 of 2017**

- Kamal Kishore Kaushik Ph. No. 32, Sarkanda, Tehsil and District Bilaspur Chhattisgarh

---- Petitioner**Versus**

- Rajneesh Sahu S/o Palakram Sahu, Aged About 45 Years, R/o Shyam Plaza, Nutan Chowk, Sarkanda, Tehsil & District Bilaspur Chhattisgarh
- State Of Chhattisgarh, Through Secretary, Government of Chhattisgarh, Department of Home, New Raipur, District Raipur Chhattisgarh
- Station House Officer, Police Station Sarkanda, Bilaspur District Bilaspur Chhattisgarh
- Chandram Banjare Patwari, P H. No. 20, Sarkanda, Bilaspur R/o Near Saint Xavier's School, Bhartiya Nagar, Bilaspur District Bilaspur Chhattisgarh
- Dhanram Mahilange, Tehsildar, Bilaspur, R/o Yadunandan Nagar, Tifra, Bilaspur Chhattisgarh
- Sudhanshu Mishra (Property Dealer), S/o Shri M. L. Mishra, A-39 Songanga Colony, Chantidih, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Shri R.S.Marhas, Advocate.
 For Respondent No.1 : Shri S.C.Verma, Advocate.
 For State/Respondents 2 and 3: Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****24/11/2017**

1. Heard.
2. It is submitted by learned counsel for the petitioner that order has been passed by this Court in WPCR No.52/2017 dated 11-09-2017 without issuing notice to the Petitioner who was arrayed as

Respondent No.6 in that case. It is submitted that directions were issued in that order to Respondents 1 and 2 the investigating authority to complete the investigation in the case of which the complaint was made by Respondent No.1 in this case who happened to be Petitioner in that case.

3. It is submitted that WPCR No.305/2016 earlier filed by the Petitioner was pending, this fact was suppressed by Respondent No.1. It is also submitted that Respondent No.1 had also filed the WP(PIL) No.57/2017 which was disposed off vide order dated 02-08-2017 in which he has deliberately not arrayed the applicant/Petitioner as a party. In these state of things, the order passed in WPCR No.52/2017 shall have a bearing and effect on WPCR No.305/16 which is yet to be decided. Respondent No.1 had notice of this petition pending, even then he has suppressed this fact, the prayer made in the said petition is clear and categorical to quash and set aside the order passed by the trial Court allowing the application under Section 156(3) of the Cr.P.C., on the basis of which the FIR has been registered against the applicant/Petitioner. Hence, it is prayed that the order passed by this Court dated 11-09-2017 be recalled and both the petitions be heard together.

4. Learned counsel for Respondent No.1 opposes the petition and the submission made. It is submitted that the order passed by this Court does not have any effect on the pending petition filed by the Petitioner as simply a direction has been issued to the investigating authorities to complete the investigation of the case expeditiously which does not come in the way of the prayer made in

the petition filed by the Petitioner. It is also submitted that in WP(PIL) No.57/2017 by the Division Bench of this High Court it has been observed that FIR has been registered and due action shall follow. Hence, under these circumstances there is no requirement of recalling the order passed by this Court.

5. Learned counsel for the State/Respondents 2 and 3 has opposed the Revision Petition and submitted that the investigation is being carried out in accordance with the direction issued by this Court in the impugned order.

6. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in **L. Narayana Swamy Versus State of Karnataka and Others, reported in (2016) 9 SCC 598, 2016 SCC OnLine SC 903** wherein it has been held that an order directing further investigation under Section 156(3) of the Cr.P.C. cannot be passed in relation to a public servant in the absence of valid sanction and a Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) of the Cr.P.C. On the similar point, the Petitioner has also placed reliance on the matter of **Anil Kumar and Others Versus M.K. Aiyappa and Another, reported in (2013) 10 SCC 705** and **Priyanka Srivastava and Another Versus State of Uttar Pradesh and Others, reported in (2015) 6 SCC 287**.

7. Taking into consideration this fact that the Petitioner in this case has filed a separate petition specifically challenging the order passed by the trial Court under Section 156(3) of the Cr.P.C. which is supported by the view laid down by Hon'ble the Supreme Court in

the judgment *L.Narayan Swamy Versus Sate of Karnataka* (supra), I am of this view that the order passed by this Court has an effect of authorizing the order passed by the trial Court which is impugned in WPCR No.305/16 presented by the petitioner pending to be heard and disposed off. Hence, for these reasons, this petition deserves to be allowed.

8. Accordingly, the Review Petition filed by the petitioner is hereby allowed and the order dated 11-09-2017 in WPCR No.52/2017 is recalled. The said petition shall be heard along with WPCR No.305/2016. Registry is directed to list the said petitions in accordance with the roster prevailing before the appropriate Bench.

Sd/-

(Rajendra Chandra Singh Samant)
Judge