

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1137 of 2016**

Bhupendra Kumar Pandey S/o Late Shri Sunder Lal Pandey Aged About 48 Years R/o Vaishnav Colony Balodabazar, Police Station & Tahsil-Balodabazar, Civil & Revenue District Balodabazar- Bhatapara, Chhattisgarh.

---- **Petitioner**

Versus

1. Smt. Saroj Pandey D/o Late Shri Devi Prasad Dubey Aged About 46 Years
2. Ramkushal Dubey S/o Late Shri Devi Prasad Dubey Aged About 58 Years
3. Smt. Shail Devi Wd/o Late Shri Devi Prasad Dubey Aged About 68 Years
4. Hemant Kumar S/o Late Shri Devi Prasad Dubey Aged About 51 Years
5. Panna Lal @ Parmanand S/o Shri Laxman Prasad Dubey Aged About 56 Years

Respondents No.1 to 5 are R/o Village- Lata, Post- Siriyadih, Vihaya-Dongaridih, Thana & Tahsil- Kasdol, Civil & Revenue District-Balodabazar- Bhatapara, Chhattisgarh.

6. Purendra Pandey S/o Shri S.P. Pandey Aged About 49 Years Occupation- Advocate Clerk, Civil Court Balodabazar, Police Station & Tahsil Baloda Bazar, Civil & Revenue District Balodabazar- Bhatapara, Chhattisgarh.
7. State Of Chhattisgarh Through The District Magistrate Balodabazar, Civil & Revenue District Balodabazar- Bhatapara, Chhattisgarh.

---- **Respondents**

For Petitioners	Shri Sunil Sahu, Advocate.
For Respondent No.1to 6	Shri Hemant Gupta, Advocate.
For Respondent/State	Shri SRJ Jaiswal, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

04/01/2017

1. The present petition has been filed against the order dated 16.08.2016 whereby the 3rd Additional Sessions Judge, Baloda Bazar, in Criminal

Revision No.40/2015 has rejected the revision upholding the order dated 05.06.2015 passed by the Chief Judicial Magistrate, Baloda Bazar in an unregistered complaint preferred by the petitioner for taking cognizance against the respondents for the offence under Sections 193,196,199, 200,211,378,469,470,499 and 500 IPC.

2. Facts in brief is that, the petitioner is the Husband of respondent No.1. The marriage between the two had taken place in June, 1998. Subsequently, the relationship between the two got strained and in due course of time, the respondent No.1 is said to have left the matrimonial home and has started living at parental home. Meanwhile, a complaint under Section 498-A IPC was also lodged against the husband and his family members where they were prosecuted before the Chief Judicial Magistrate, Baloda Bazar, in Crime No.506/2012. The proceeding culminated in conviction of the petitioner and his mother and they were sentenced to undergo RI for two years with fine of Rs. 1000/- each. The said judgment of conviction of petitioner and his mother under Section 498-A IPC was challenged before the Additional Sessions Judge, Baloda Bazar which was registered as Criminal Appeal No.36/2013. The lower appellate court, however, set aside the judgment of conviction and had acquitted the petitioner and his mother from the charge under Section 498-A IPC vide judgment dated 28.06.2013.
3. Subsequently, the present complaint was filed on 11.11.2013 by the petitioner for taking cognizance against the respondents for the offence under Sections 193,196,199, 200,211,378,469,470,499 and 500 IPC. It

was alleged by the petitioner that the respondents herein particularly the respondent No.1 in connivance with others have prepared and used fake and forged document for the purpose of prosecuting the petitioner and his family for the offence under Section 498-A IPC and where he also had been found guilty initially by the CJM, Baloda Bazar till the judgment of conviction was set aside by the lower appellate court.

4. According to counsel for the petitioner, a concocted document was used for prosecuting the petitioner under Section 498-A IPC and thus the act falls within the provisions of Sections 193,196 and 199 IPC and therefore, the offence was prima facie made out against the respondents herein. The courts below without proper appreciation of the evidence rejected the complaint case as also subsequent revision. According to him, the court below ought to have only seen whether from the nature of allegation prima facie offence is made out or not. From the averment made in the complaint and the statement that he has made, prima facie commission of offence is established and proved. However, the court below has still made an observation that there is no sufficient evidence available before the court below, resulting in the rejection of the complaint case and the revision.
5. According to him, the stage of evidence has not yet reached and during the course of evidence he would bring all these facts before the court below. Thus, the two orders are bad in law and deserve to be interfered with.
6. Counsel for the respondents No.1 to 6, however, opposing the petition

submits that it is a clear case of revengeful attitude of the petitioner, who on account of complaint of the respondent No.1 under Section 498-A IPC where he was convicted initially, but subsequently got an order of acquittal from the appellate court. Counsel for the respondents further submits that the present complaint is nothing but an act of vengeance on the part of the petitioner who wants to only harass the respondent No.1. Thus, prayed for rejection of the petition.

7. Having considered the rival contentions put forth on either side and on perusal of record, this court is of the opinion that the entire petitioner revolves around the observation made by the court below while granting acquittal by the appellate court. This by itself would not prima facie be a ground for lodging complaint under Sections 193,196,199, 200, 211, 378, 469,470,499 and 500 IPC which has been sought for by the petitioner.
8. Initially the complaint of the respondent No.1 resulted in an order of conviction which itself shows that there was proper appreciation of facts and evidence by the court below which later on was not accepted by the appellate court while entertaining the appeal on the judicial side. The observations made by the appellate court while setting aside the order of conviction by itself would not make out a case for registration of complaint under Sections 193,196,199,200,211,378,469,470,499 and 500 IPC as has been sought for by the petitioner.
9. This court having perused the two orders i.e. order dated 05.06.2015 passed by Chief Judicial Magistrate, Baloda Bazar and subsequent order i.e. 16.08.2016 passed by the 3rd Additional Sessions Judge, Baloda

Bazar in Criminal Revision No. 40/2015 does not find any error of law or any illegality while reaching to the said conclusion.

10. Thus, the present CrMP being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder