

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 11.08.2017

Order Passed on : 24.08.2017

W.P.(CR.) No. 63 of 2017

1. Krishna Kumar Sahu, S/o. Late Shri T. R. Sahu, Aged About 48 Years, R/o. Village Chandana, Chowki Karelibaba, Police Station -Magarlod, District Dhamtari (Chhattisgarh)
2. Dr. Manjeet Kaur Bal, D/o Shri D. S. Bal, Aged About 40 Years, R/o. F3C, Block 22/301, Sector 27, New Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Union Of India, Through: The Secretary, Law and Legislative Affairs Department, New Delhi.
2. State Of Chhattisgarh, Through Chief Secretary, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhavan, Naya Raipur, District Raipur (Chhattisgarh)
3. Additional Chief Secretary, Panchayat and Rural Development Department, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
4. The Secretary, Health and Legislative Affairs, State of Chhattisgarh, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
5. The Secretary, Law and Legislative Affairs Department, State Of Chhattisgarh, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur (Chhattisgarh)
6. The Director General Of Police, Police Head Quarters, Naya Raipur, District Raipur (Chhattisgarh)
7. The Superintendent of Police, Dhamtari, Police Station Kurud, Through The Station House Officer, District Dhamtari (Chhattisgarh)
8. The Inspector General Of Police, Anti Corruption Wing, Chhattisgarh, In Front Of Jai Jawan Petrol Pump, Police Station Anti Corruption Wing, Chhattisgarh Through The Station House Officer (Chhattisgarh) Raipur (Chhattisgarh)
9. The Election Commission Of Chhattisgarh, Through : The Presiding Officer, Election Commission Of Chhattisgarh, Near Old D. K. S. Bhawan, Raipur Chhattisgarh.

10. Ajay Chandrakar, S/o. Late Kaliram Chandrakar, Aged About 53 Years, Presently Holding The Constitutional Post of Cabinet Minister of the State Of Chhattisgarh for the Department of Panchayat and Rural Development, Health Department, Legislative Affairs, Department, R/o Near Bajrang Chowk, Village and Post Kurud, District Dhamtari (Chhattisgarh)
11. Director, Central Bureau of Investigation, Plot No. 58, CGO Complex, Lodhi Road, New Delhi 110003.

-----Respondents

For Petitioners	: Mr. S.C. Verma, Advocate
For Respondent No.1/U.O.I.	: Mr. N.K. Vyas, Asst. S.G.
For State/Respondents No.2 to 9.	: Mr. J.K. Gilda, Advocate General with Mr. Ramakant Mishra, Dy.A.G.
For Respondent No.11	: Mr. Kishore Bhaduri, Advocate with Mr. Pawan Kesharwani, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

24/08/2017

1. This petition under Article 226/227 of Constitution of India has been brought with prayer for issuance of various writs, for calling of records, for special investigation in the matter against the respondent No.10, for order of constitution of special investigation team and various other reliefs.
2. Counsel for the petitioners submits that petitioner No.1/complainant filed an application U/s. 156 (3) of Cr.P.C. before the Special Court, Dhamtari against respondent No.10, alleging in it that respondent No.10 is holder of disproportionate assets. On orders of Special Court, an enquiry was made by EOW and report was submitted by the Anti Corruption Bureau dated 12.06.2014 according to which, no cognizable offence is made out against respondent No.10. It is

submitted by the counsel for the petitioners that it is a finding in the report of the enquiry officer that property valued at Rs.24,10,426/- was found in excess to the earnings of the respondent No.10 during the check period. It is submitted by the counsel for the petitioners that on the basis of this report, the Special Court was bound to order for filing of charge-sheet. It is further submitted that petitioner No.1/complainant was coerced and threatened by respondent No.10 to withdraw the complaint against him, hence under coercion, petitioner No.1 was compelled to file application before the Special Court for withdrawal of complaint on which the order dated 05.07.2014 (Annexure P/1) was passed. It was under the duress that petitioner No.1 was compelled to file application before this Court in W.P.(Cr.) No.50/2014 with prayer to send the record of the case to the trial Court for passing appropriate order on the application made by the petitioner No.1.

3. It is submitted by counsel for petitioners that for purpose of coercion and threatening the petitioner No.1, false complaint was filed against him by one Bajrang Agrawal (Annexure P/29). On the basis of which, an FIR was registered against petitioner No.1, in P.S. – Rudri for offence U/s. 384 of Indian Penal Code. Later on petitioner No.1 was acquitted from the prosecution based on that FIR because complainant, Bajrang Agrawal turned hostile before the Court. Just prior to the filing of application before the Special Court below for withdrawal of application under Section 156 (3) of Cr.P.C., on 05.06.2014, one application was filed by Bajrang Agrawal in P.S. Rudri on the same date with prayer not to proceed against petitioner

No.1 on the basis of complaint made by him. It is further submitted that petitioner No.1 had to file an application before Superintendent of Police, Dhamtari on 22.02.2014 to provide protection. All these facts shows that how the petitioner No.1/complainant was entrapped and coerced to withdraw the application filed by him before the Special Court in well planned manner.

4. It is further submitted that petitioner No.1 was compelled to file application before various authorities including the Chief Justice of the High Court of C.G. to seek his personal protection. Petitioner No.1 had an anticipation filed a complaint before the Superintendent of Police, Dhamtari, Inspector General of Police, Raipur Range, D.G.P. and Superintendent of Police, Anti Corruption Bureau on 14.05.2014 that he may be implicated in some false case. It is also submitted that the application filed by petitioner No.1 under Section 156 (3) of Cr.P.C. had sufficient substance, which has not been investigated or enquired into.
5. Reference has been made to order dated 23.01.2004, passed by Special Secretary, C.G. Government, which shows how the District Administration and government had collaborated with respondent No.2 in the matter of exchange of lands, according to which, the land in the name of brother of respondent No.10 which was lying in the interior part was exchanged with land on the road side and it was reported by the concerned revenue officer that price of both the lands are same. It is submitted that an illegal colony was constructed in Village-Charra, Tahsil – Kurud, by respondent No.10 on government land, which has been sold out. Reference has been

made to kistbandi khatauni in the name of respondent No.10, mentioning the details of various lands, recorded in his name alleging that these properties were purchased by respondent No.10 during the check period. Reference has also been made of Kistbandi Khatauni in the name of wife of respondent No.10, showing the details of various lands in her name alleging that these properties are also purchased during the check period. Reference has also been made to the properties held by the various relatives of respondent No.10.

6. It is further submitted, that in reply submitted to the enquiry officer, respondent No.10 has deliberately given false information submitting enhanced valuation of his income of property, even then the return shows that no taxable income was found, which needs special investigation. It is submitted by the counsel for the petitioner that it is a clear cut case of holding disproportionate assets by respondent No.10, which could not have been terminated simply on the basis of the prayer made by the petitioner No.1/complainant, as it is clearly demonstrated that petitioner No.1 was under duress and pressure to file such application. Respondent No.10 is holding a post of Cabinet Minister in the government of Chhattisgarh, hence said investigation agency can not be expected to conduct free and fair investigation in this matter. Hence, it is a fit case, where the direction should be issued and order should be passed for investigation of the matter by CBI or some other independent agency.

7. Mr. J.K. Gilda, Advocate General on behalf of State/respondent No.2 to 9 has opposed the petition vehemently, firstly on the ground that petition has been brought with inordinate delay and after due deliberation. Secondly, the issue has been raised, that passing of any order in accordance with prayer made in the petition would amount to recalling of the order of the Single Bench, passed earlier. Further question have been raised that matter is totally based on facts, this Court can not record any evidence and in such case, no direction can be given for investigation and no monitoring can be done by the Court. Submission has been made with respect to relief claimed in the petition stating that nature of relief asked for can not be granted by this Court.
8. It is further submitted by the learned Advocate General that application under Section 156 (3) was filed on 18.12.2013, before the Special Judge, under the Prevention of Corruption Act, Dhamtari. Order was passed by Special Judge to make an enquiry and if necessary, register FIR and thereafter, submit report or charge-sheet. Consequent to that, enquiry has been made. In the meanwhile, respondent No.10, preferred a W.P.(Cr.) No.50/2014, before this Court, in which the Single Judge of this Court passed an order to stay the proceeding against the respondent No.10 by order dated 10.04.2014. Thereafter, the case was listed on 27.06.2014 for hearing on application filed by respondent No.4, the petitioner No.1 herein this case. The application was heard on the prayer for sending the record of the case back to the trial Court for decision on the application moved, before the trial Court for withdrawal of

application under Section 156(3) of Cr.P.C. and order was passed for sending record to the trial Court with a direction to pass appropriate order on the basis of the report submitted by the investigating agency. It is specially mentioned that the application for withdrawal of original application under Section 156(3) of Cr.P.C. was filed, before the Special Court along with affidavit sworn in by the petitioner No.1 himself. There is nothing to suggest that, petitioner No.1 has withdrawn the application before the Special Court, Dhamtari on some duress or coercion.

9. It is further submitted that the order for withdrawal of application under Section 156(3) of Cr.P.C. was passed by the Special Court, Dhamtari on 05.07.2014. It is almost after passing of more than two and half years, this petition has been filed by the petitioners. On going through the whole draft of petition, not a single explanation has been offered by the petitioner as to why this petition was filed so late before this Court. Hence this petition has been brought with inordinate delay, which can not be entertained by this Court. Reliance has been placed by the counsel for the State/respondents on the judgment passed by the Hon'ble Supreme Court in case of ***Ramesh Kumar and Ors. Vs. Technological Institute of Textiles & Ors.***, reported in ***(1981) 2 SCC 268***, in case of ***Pt. Girdharan Prasad Missir & Anr. Vs. State of Bihar & Anr.***, reported in ***(1980) 2 SCC 83***, ***State of Maharastra Vs. Digambar***, reported in ***(1995) 4 SCC 683***, ***State of Kerala & Ors. Vs. A.K. Gopakumar***, reported in ***(2013) 11 SCC 606***, ***State of Mysore & Ors. Vs. V.K. Kangan & Ors.*** reported in ***(1976) 2 SCC 895***.

10. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in case of ***K. Saravanan Karuppasamy & Anr. Vs. State of Tamil Nadu & Ors.***, reported in ***(2014) 10 Supreme Court Cases, 406***, in which it was held that exercise of extra ordinary power in handing over investigation to CBI must be exercised cautiously and in exceptional circumstances. Reliance has also been placed in case of ***State of Karnataka Vs. Arun Kumar Agarwal & Ors.***, reported in ***(2000) 1 Supreme Court Cases 210***, in which it was held that investigation can not be ordered by the High Court on the basis of mere suspicion.
11. It is also submitted by the learned Advocate General, that passing of any order would amount to recall of order dated 27.06.2014, passed in W.P.(Cr.) No.50/2014. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***Naresh Vs. State of Maharastra***, reported in ***AIR 1967 SC 1***, and in case of ***M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr.***, reported in ***1969 (1) SCC 110***. It is submitted that whatever the allegation made by the petitioners, enquiry has been made and satisfaction has been arrived at by the investigating officer. Reliance has been placed in the case law reported in ***(2013) 9 Supreme Court Cases 447, Doliben Kantilal Patel Vs. State of Gujarat & Another***, in which it has been held that the police has authority to make limited enquiry to satisfy itself about the allegation made in the complaint and the satisfaction has been arrived at in the report submitted by the enquiry officer that no cognizable offence is made out against respondent No.10. It is further submitted by the learned Advocate

General that remedy is available to petitioners by way of revision before this Court along with filing the petition under Section 482 of Cr.P.C., hence the petition under Article 226 is not maintainable.

12. Mr. N.K. Vyas, Asst. S.G. for Union of India has submitted that Special Court has passed the order on application under Section 156 (3) of Cr.P.C. that consequent to the order passed by this Court, hence this order can not be recalled by the Coordinate Bench. It is also submitted that petition under Article 226 of Constitution of India is not maintainable as remedy is available to the petitioners by way of filing revision before the revisional Court or by way of bringing petition under Section 482 of Cr.P.C. before this Court. It is also submitted that petitioner No.2 has no case as she was not a complainant before the Special Court, hence, petition on her behalf is not maintainable at all.
13. Counsel for CBI submits that no case is made out by the petitioners for investigation to be made by CBI. But in case, any order is passed by this Court for investigation of the case, then C.B.I. is ready to abide by all such order. Reliance has been placed at Para-70 of the judgment of Hon'ble Supreme Court in case of ***State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights West Bengal & Ors.***, reported in ***(2010) 3 Supreme Court Cases 571***, which reads as under :-

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the

exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

14. Reliance has also been placed on the judgment passed by the Division Bench of this Court, in ***W.P.(PIL) No.35/2017, Chhattisgarhi Samaj Party Vs. State of C.G. & Ors. dated 06.04.2017.***
15. In reply, counsel for the petitioners submits that Advocate General has in-fact defended the respondent No.10 in this petition and the submission made by him can not be regarded as submission on behalf of the State as the State is defined in Article 12 of the Constitution of India. It is submitted that all the relief claimed in the

petition are proper which can be considered for grant by this Court. Petitioners have clearly demonstrated that how petitioner No.1 has been rounded up, harassed and tortured to withdraw the application under Section 156(3) of Cr.PC. It is further submitted that order in W.P.(Cr.) No.50/2014, dated 27.06.2014 was passed with different intention only for the purpose of sending the record of the case to the trial Court to pass order on the application filed by the petitioner No.1. This order does not contain any observation or finding with respect to the proceedings initiated under Section 156 (3) of Cr.P.C., hence considering on this petition and passing any order by this Court would not amount to recall of the order of the Coordinate Bench. It is submitted by the counsel for the petitioners that reason for delay has been explained by the submission of documents by the petitioners, the complaint and the application made to the police authority to provide him security, as petitioner No.1 has all the times apprehended danger to his well being. It is also submitted that petitioners have come before this Court for constitutional remedy. Reliance has been placed at Para -47 of the judgment of the Hon'ble Supreme Court in case of ***Fertilizer Corporation Kamgar Union (Regd.), Sindri and Ors. Vs. Union of India & Ors.***, reported in ***(1981) 1 Supreme Court Cases 568***, which reads as under :-

“47. In the present case a worker, who, clearly, has an interest in the industry, brings this action regarding an alleged wrong-doing by the Board of Management. Article 43A of the Constitution confers, in principle, partnership status to workers in industry and we cannot, therefore, be deterred

by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector. Locus standi and justiciability are different issues, as I have earlier pointed out. This takes us to the question of justiciability of questions like sale of public property by public bodies. Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.

16. Reliance has also been placed on the judgment passed by the Hon'ble Supreme Court in Case of ***Adalat Prasad Vs. Rooplal Jindal & Ors.*** Reported in ***(2004) 7 Supreme Court Cases 338***, in which it was held that the Magistrate taking cognizance of an offence on complaint has option to examine the complainant and witnesses and to pass order of dismissal of complaint under Section 203 of Cr.P.C. or by taking cognizance in the complaint, order for issuance of process under Section 204 of Cr.P.C. Under Section 202, Magistrate is empowered to postpone the issuance of process and call for the report based on enquiry in the complaint and thereafter, the Magistrate shall consider on the evidence of the

witnesses as well as enquiry report passing order either under Section 203 or 204 of Cr.P.C. It is submitted that trial Court has not acted in accordance with law, he may have passed an order either under section 203 or 204 of Cr.P.C.

17. Reliance has also been placed on the judgment passed in case of ***Rubabbuddin Sheikh Vs. State of Gujarat & Ors***, reported in ***(2010) 2 SCC 200***, in which it was held that investigation has to be conducted in fair manner in order to instil confidence in the minds of the victims as well as of the general public. Further reliance has been placed in case of ***State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal & Ors.*** reported in ***(2010) 3 Supreme Court Cases 571***, in which it was held that the Supreme Court and the High Court have power, jurisdiction and obligation to protect the fundamental rights guaranteed by Part-III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.
18. Reliance has also been placed in case of ***State of Maharashtra Vs. Farook Mohammed Kasim Mapkar & Ors.***, reported in ***(2010) 8 Supreme Court Cases 582***, in case of ***Narmada Bai Vs. State of Gujrat & Ors.*** reported in ***AIR 2011 Supreme Court 1804***, in case of ***Ram Jethmalani & Ors. Vs. Union of India & Ors.*** reported in ***(2011) 8 Supreme Court Cases 1***, in case of ***Pooja Pal Vs. Union of India & Ors.*** reported in ***(2016) 3 Supreme Court Cases 135***, in case of ***Babubhai Jamnadas Patel Vs. State of Gujarat & Ors.*** reported in ***2010 AIR SCW 481***, in case of ***Kedar Narayan Parida & Ors. Vs. State of Orissa & Anr.*** reported in

2010 AIR SCW 459, in case of **Sangita Vilas Ingle Vs. State of Maharashtra & Ors.** reported in **(2017) 2 Supreme Court Cases 728**.

19. I have heard the learned counsel for the respective parties at length and perused the documents placed on record.
20. On the basis of the submission made in this case, the contents of the application under Section 156 (3) of Cr.P.C. made has relevance on this point whether they amount to facts established or are mere allegations. Statement given and the documents submitted in proof that respondent No.10 has amassed wealth and thus has built disproportionate assets, by themselves are not complete, as the documents pertaining to land records mentions names of various persons, they may be related to respondent No.10 as holder of the land mentioned in the land record. It is alleged by the petitioners that property i.e. held by various persons, who are in the name of persons related to the respondent No.10 are in reality benami property. This allegation along with other allegations made, have been enquired into and the report submitted by EOW/Anti Corruption Bureau states that the various properties held by various persons named is claimed by the holders themselves, which can not be held as benami property and no offence is made out against the respondent No.10.
21. The submission of the counsel for the petitioners, that report mentions that value of property and assets of respondent No.10, with respect to the check period was found to be excess to the tune of Rs.24,10,426/-, is misconceived statement. The report states that

Rs.24,10,426/- is excess income of respondent No.10. Report also mentions that alleged benami property was also enquired into and it was found that none of the properties belongs to respondent No.10.

22. This petition has been brought by the petitioners in personal capacity representing themselves as an aggrieved persons. Grounds raised in the petition or in the application made under Section 156 (3) of Cr.P.C. have no connection with any fundamental right or civil liberty of the petitioners being abused. It seems that petitioners have tried to become whistleblower to bring forth so called acts of corruption alleged to have been committed by the respondent No.10. Enquiry report has negated the allegations made by the petitioners and simply on the basis of the documents placed on record, petitioners are claiming the property mentioned in the documents to be property of respondent No.10 and thus disproportionate assets. Considering all the documents on record and the statement made by the petitioners, it appears that vague allegation has been levelled against respondent No.10, which has been examined and reported by EOW/Anti Corruption Bureau of the State. Simply by raising objections and doubts on the report submitted by the EOW/ACB, it can not be made out that petitioners have case against respondent No.10, which needs investigation by an independent agency. The respondent No.10, is a political person and Minister in the Government of State of Chhattisgarh, this by itself can not be made ground to believe that enquiry by the EOW/ACB has been influenced by him.

23. Considering the objections raised by the Advocate General for respondent/State, the question of bringing this petition with inordinate delay is very much alive. Petitioners had courage to stand up and file an application under Section 156(3) against the minister of the State. Considering the submission made by the petitioner No.1 that he was rounded up, harassed and tortured to withdraw the application under Section 156 (3) of Cr.P.C. The criminal case filed against the petitioner No.1 terminated on 09.02.2015 by his acquittal, all the application that was filed by the petitioner No.1 to provide him protection consequent to alleged threat, all the copies and the complaint that petitioner No.1 made to the police authorities to provide protection mention dates starting from the year 2013 and the last of March, 2015. It was almost after passing of two years, this petition has been brought before this Court. The reason taken by the petitioners to bring the petition after delay of two years has not been explained. It is for this situation that ***Ramesh Kumar and Ors. Vs. Technological Institute of Textiles & Ors.*** reported in ***(1981) 2 SCC 268 (supra)***, ***Pt. Girdharan Prasad Missir & Anr. Vs. State of Bihar & Anr.***, reported in ***(1980) 2 SCC 83 (supra)***, ***State of Maharastra Vs. Digambar***, reported in ***(1995) 4 SCC 683 (supra)***, ***State of Kerala & Ors. Vs. A.K. Gopakumar***, reported in ***(2013) 11 SCC 606 (supra)*** have specifically directed against entertaining a petition filed at belated stage.
24. Another objection raised by the State that passing of any order by this Court would amount to recall of the order passed by the

Coordinate Bench in W.P.(Cr.) 50/2014 dated 27.06.2014 is misconceived argument, as this order has not recorded any observation with respect to the enquiry report submitted by the EOW/ACB or with respect to the application filed by the petitioner No.1 for withdrawal of application under Section 156(3) of Cr.P.C. It was directed in the order by the Coordinate Bench that record of the trial Court be sent immediately to the trial Court for passing proper order on the basis of the report submitted by the respondents on the application filed by the respondent No.4 i.e. the petitioner No.1 here in this case. This order has been complied with and order has been passed by the trial Court accordingly. Hence there is nothing to suggest that considering and passing any order in this petition would amount to recall of the order passed by the Coordinate Bench of this Court.

25. After closely scrutinizing the documents on record, the submissions made and after due consideration, it is found that this petition is without any substance, based on vague allegations, making effort only for raising suspicion against respondent No.10. It is settled position of law that merely on the basis of suspicion, no enquiry can be ordered to be conducted either by the State agency or by CBI and that only in exceptional and extra ordinary cases, the investigation can be ordered to be conducted by CBI by the High Court. On the other hand petitioner No.1 had remedy available under Section 397 of Cr.P.C. to file revision against the order passed or at the most move this Court U/s. 482 of Cr.P.C. Limitation to bring revision has clearly expired. Hence an effort has been

made to raise a time barred matter under Article 226 of the Constitution of India.

26. Hence under these circumstances, this is not a fit case to be admitted, accordingly, it is dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram