

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 234 of 2016**

1. Vijay Sonu Markandey S/o Ubaran Das Markandey, Aged About 33 Years R/o Near Dalal Talab, Ward No.15, Tahsil Tilda, P.S. Tilda, District Raipur, (Chhattisgarh)
2. Laxminarayan Verma, S/o Shri Ramswarup Verma, Aged About 36 Years R/o Purani Basti Jota Road, Tahsil Tilda, P.S. Tilda, District Raipur, (Chhattisgarh)
3. Mahesh Agrwal, S/o Late Shri Brijmohan Agrawal, Aged About 42 Years R/o Tilda Kharora Road, Near Punjab National Bank, Tahsil Tilda, P.S. Tilda, District Raipur, (Chhattisgarh)
4. Ravi Sen, S/o Shri Prabha Shankar Sen, Aged About 27 Years R/o Bhairavgarh Dham, Ward No.3, Tahsil Tilda, P.S. Tilda, District Raipur, (Chhattisgarh)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through: Its Secretary, Home Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur, (Chhattisgarh)
2. Hemshankar Deshlahra, S/o Late Shri D. Deshlahra, Aged About 54 Years R/o Nagar Palika Parishad, Tilda (Posted As C. M. D. At Nagar Palika Parishad Tilda) Tahsil & P.S. Tilda Neora, District Raipur, (Chhattisgarh)
3. Police Station Tilda Neora, Through Its Station House Officer, Tahsil Tilda, District Raipur, (Chhattisgarh)

---- Respondents**&****WPCR No. 325 Of 2016**

1. Suraj Narayan Sharma S/o Late Shri Hari Prasad Sharma, Aged About 49 Years R/o Near Jain Temple, Ward No. 12, Bazaarpara, Tahsil & P.S. Tilda Neora, District Raipur, (Chhattisgarh)
2. Nilhil Jain, S/o Shri Narendra Kumar Jain, Aged About 32 Years R/o Sankat Mochan Temple, Gandhi Chowk, Ward No. 12, Tahsil & P.S. Tilda Neora, District Raipur, (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Its Secretary, Home Department, Mantralaya, Mahanadi Bhavan, Naya Raipur, Raipur, (Chhattisgarh)
2. Hemshankar Deshlahra, S/o Late Shri D. Deshlahra, Aged About 54 Years R/o Nagar Palika Parishad, Tilda (Posted As C.M.O. At Nagar Palika Parishad Tilda) Tahsil & P.S. Tilda Neora, District Raipur, (Chhattisgarh)
3. Police Station Tilda Neora, Through Its Station House Officer, Tahsil Tilda, District Raipur, (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Bhaskar Pyasi, Advocate.
For Respondents No.1 & 3/State	:	Shri Ashish Shukla, Govt. Advocate.
For Respondent No.2		Shri Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

11/08/2017

Heard on admission.

1. Counsel for petitioners submits that petitioners are elcted representatives and respondent No.2, is the Chief Municipal Officer at Tilda who belongs to category of Scheduled Caste. He is habitual of implicating the person in false criminal cases, whoever raises voice against him. A tender notice was published in Newspaper "*Haribhumi*" dated 07.07.2016 for construction of boundary wall surrounding the Community Hall near vegetable market and the proposed construction was estimated at Rs.7,39,000/-. As per information of the petitioners, there is no existence of any Community Hall for which respondent No.2 has filed forged document to show the existence of such Community Hall. Further, there are various allegations against the respondent No.2 regarding having committed financial irregularities. Respondent No.2 has lodged a false report vide **(Annexure P/9)** against the petitioners alleging that on 19.07.2016 at about 1:00 p.m. petitioners and 15 others came into the office of respondent No.2, inquiring about the tender floated and raised dispute about it thereafter, they abused the petitioner by using abusive words and also insulted by him by his caste name and then assaulted him with hands and feet. Offence under Sections 294, 323 & 506/34 of the Indian Penal Code (for short 'IPC') have been

registered against the petitioner by Police Station-Tilda.

2. In the statement made by counsel for petitioner, various acts of respondent No.2 have been narrated alleging that he is habitual of falsely implicating the persons with whomsoever he has any enmity, hence, the criminal case registered against the petitioners is herein is abuse of process of law. Hence, this petition.
3. Counsel for the State has opposed the submissions made on behalf of the petitioners, it is submitted that the case is under investigation, hence, there are no grounds for interference in the investigation procedure, the grounds alleged in this petition are in fact the grounds of defence. In case, the petitioners are prosecuted then these grounds of defence can be raised before the trial Court.
4. Counsel for respondent No.2 has opposed the arguments submitted on behalf of the petitioners and stated that petitioners are themselves councilors have created impediment of smooth function of municipality because of their personal interest. The counter allegations leveled against respondent No.2 cannot be taken into consideration for quashing the FIR standing against the petitioners. The petition is misconceived which may be dismissed.
5. Counsel for petitioners has relied upon the judgments of Supreme Court in ***State of Andhra Pradesh Vs. Vangaveeti Nagaiah***, reported in **2009 (Supple.) Cr.L.R. (SC) 11**, ***Asmathunnisa Vs. State of Andhra Pradesh***, reported in **(2011) 11 SCC 259** and ***Gorige Pentaiah Vs. State of Andhra Pradesh & Ors.***, reported in **(2008) 12 SCC 531**, ***Thakur Singh Vs. State of Madhya Pradesh***, reported in **2016(12) Cr.L.R. (M.P.) 266**.
6. Both the parties are heard and perused the documents on record.
7. Considering the submissions and the documents on record, it is apparent that respondent No.2 has lodged the FIR against the petitioner with specific details of the overt-act committed by them. The contents of the FIR is supported by the statement of witnesses recorded under Section 161 of Cr.P.C. which has been produced on record by the respondents No. 1 & 3. Hence, for these reasons, at this juncture, it cannot be held outright that the report lodged by respondent No.1 is false and abuse of process of law. All the contentions of the petitioners are in fact the grounds of defence. The reliance of the petitioner on one inquiry report submitted by P.S.-Newra dated 10.06.2016, is not connected with the

incident dated 19.07.2016 regarding which the FIR has been lodged against the petitioners.

8. Hence, for these reasons, it cannot be regarded at this stage that the complaint and proposed investigation is abuse of process of law. Hence, the petition is not fit for admission. It is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nisha