

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.191 of 2013**

1. Balraj Kumar Dheer S/o Shri Satyaprakash Dheer Aged About 76 Years R/o MIG - 19, Indrawati Colony, Raja Talab, PS Civil Lines, Raipur, Distt. Raipur C.G.
2. Sarvesh Dheer S/o Shri Balraj Kumar Dheer Aged About 39 Years R/o At MIG-19, Indrawati Colony, Raja Talab PS Civil Lines, Raipur, Distt. Raipur C.G.
3. Smt. Suman Dheer W/o Shri B.K. Dheer Aged About 70 Years R/o At MIG-19, Indrawati Colony, Raja Talab PS Civil Lines, Raipur, Distt. Raipur C.G.
4. Smt. Rajkumari Kanda W/o Shri Mohanlal Kanda Aged About 73 Years R/o At E-3, Shankar Nagar, Near Bus Stop No. 6 1/2, Bhopal, PS Govindpura, Distt. Bhopal (M.P.)
5. Avinash Chandra Sondhi S/o Shri J. Sondhi Aged About 70 Years R/o At Stadium Road, Civil Lines, Durg, Distt. Durg C.G.

---- Applicants**Versus**

- Krishna Kumar Tripathi S/o Shri Awadh Narayan Tripathi Aged About 53 Years R/o At Tripathi Niketan, Street -3, Ashok Vihar Colony, Pandari, Raipur, Distt. Raipur C.G.

---- Respondent

For applicants	: Shri Kishore Bhaduri and Shri Roop Naik, Advocates
For respondent	: Shri Shakti Raj Sinha, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****05.5.2017.**

Heard the matter finally.

2. Brief facts required for disposal of the instant criminal revision are that a complaint case (Sarvesh Dheer Vs. Laxmi Narayan Shande & Anr.) was pending before different criminal courts of Raipur (MP) (Now State of CG) and the said complaint case was registered as Criminal Case No.2376/06 thereafter

95/10 and thereafter 61/12. During the pendency of the said complaint case, a witness of complainant BK Dheer has filed an application dated 09.3.2010 in the Criminal Case. In the said application as alleged the said witness of the complainant made certain allegation against the lawyer and the judicial system. The counsel representing the accuse person Shri KK Tripathi subsequently filed a complaint case as complainant against the said BK Dheer, who made certain allegation in his application dated 09.3.2010 and also made the accused/non applicant Sarvessh Dheer, Smt. Suman Dheer, Rajkumari and Avinash Chand Sondhi under Sections 193, 194, 211, 500, 501, 503, 120B of the IPC praying before the Judicial Magistrate First Class, Raipur for taking cognizance against all the five non applicants under the aforementioned penal sections.

3. The concerned JMFC, Raipur vide order dated 06.10.2010 held that contents of the application may be contemptuous or scandalous but the Court is duly competent to act against the said contents and as the said application is not pressed and also the contents of the application is not a subject matter out of the Court but the said application has been filed in a proceeding in relation with court procedure and as Sections 195 & 340 of the Code of Criminal Procedure, 1973 (for short 'the Code') gave the power to the Court for appropriate action hence, held that said complaint case is not maintainable thereby dismissed the said complaint case. Against the said dismissal the lawyer of the accused

person/complainant has filed criminal revision before 5th Additional Sessions Judge, Raipur. The revisional court decided the said criminal revision No.254/10 on 06.02.2013 and held that it is not apparent that the Court below under the procedural provisions of Sections 200 to 203 of the Code had made any inquiry or investigation. With this, the impugned order was passed without any enquiry or investigation, there is no sufficient base to proceed further, with this, the revisional court held that the impugned order requires interference, consequently dismissed the said order and directed the concerned Magistrate to proceed in the matter under Chapter 15 of the Code i.e. Sections 200 to 203 of the Code. Against the said order, the respondent in the said criminal revision has preferred instant criminal revision praying that order dated 06.02.2017 passed by the 5th Additional Sessions Judge Raipur in Criminal Revision No. 254/10 may be set aside as the order suffers illegality, impropriety and incorrectness.

4. Heard both the parties.

5. Core question before the this revisional Court is in a given facts whether the aforementioned complaint case filed by the counsel of the accused persons in the said complaint would be maintainable or not and whether any proceedings/inquiry/ investigation is required under Chapter 15 of Code. As the matter is covered under Sections 195 & 340 of the Code, the Court has

to appreciate whether any offence is committed during hearing of the any proceedings pending before the said Court.

6. As a settled law, the Court itself has to appreciate whether any person had committed any penal offence during hearing of any matter, and if the said Court finds that some one had committed any penal act attracted under Sections 195 & 340 of the Code, the said Court is required to pass an order after affording opportunity of hearing to the person concerned, thereafter to file a complaint case before the appropriate criminal Court for further hearing in the matter and the said criminal court after receipt of the said complaint case filed by the Court before whom the said act was committed proceed and hear the matter in accordance with law. In the present matter the complainant/respondent himself filed the complaint case as aforementioned with a prayer that the said court may take cognizance and to punish the concerned in accordance with law but as a settled law, if the said court finds that if any offence is committed by someone, it has to file the complaint case before the competent court and the said competent court after due hearing as per procedural law may convict the said person. The jurisdiction to convict the said person is not with the Court concerned before whom any alleged penal action is committed.

7. With this, for the relevance, Sections 195 and 340 of the Code is reproduced here.

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
- (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), (namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211(both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
- (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
- (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), [except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorise in wiring in this behalf , or some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause(a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court ; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-

- (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

340. Procedure in cases mentioned in section 195. (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- (b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

8. On perusal of the order dated 06.10.2010 passed by the concerned the Magistrate it appears that though the order is not a speaking order as required but the conclusion arrived by the said criminal court is appropriate and in accordance with law and it does not require any interference at the given stage by this Court. Consequently, the order passed by the revisional court suffers illegality, impropriety and incorrectness which requires

interference as the concerned revisional Court failed to consider the relevant provisions of Section 190, 195 and 340 of the Code and the said court has taken the matter to a wrong direction i.e. under Chapter 15 of the Code.

9. Consequently, instant criminal revision filed by the applicants are hereby allowed. Order dated 06.02.2013 passed by the revisional court in Criminal revision No.254/2010 is hereby set aside.

10. Also as per the facts the matter is not yet considered by the said criminal court in the aforementioned complaint case bearing registration No.2373/2006 thereafter 95/2010 and thereafter 61/2012 for the proprietary and to consider whether any action is needed by the said criminal court on an application dated 09.3.2010 filed by the witness of the complaint BK Dheer. With this, the respondent may pray before the said criminal court in the said criminal case to examine and take appropriate action if required under the relevant provisions of Section 195 & 340 of the Code under the prevalent procedural law and authority if available. Needless to mention that if any such prayer is made on behalf of the respondent, the concerned criminal court shall examine the said prayer *vis a vis* on the basis of procedural and other law applicable in the matter so as to decide the matter properly.

11. With this observation, instant criminal revision is hereby allowed and disposed of.

12. Registry is directed to send a copy of the order to the concerned revisional court for compliance and future guidance to the concerned criminal court for information and necessary action.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE