

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No.34 of 2016**

- Nirupama Bajpai D/o Late Gayaprasad Baipai, aged about 49 years, occupation Lawyer, R/o Bajpai Banglow, Tilak Nagar, Police Station Civil Lines, Bilaspur, Civil and Revenue District Bilaspur, Chhattisgarh

**---- Petitioner****Versus**

1. Jugal Kishore Gilda R/o Warehouse, Nehru Chowk, Police Station Civil Lines, Bilaspur, District Bilaspur, Chhattisgarh
2. State of Chhattisgarh, through the Collector, Bilaspur, District-Bilaspur, Chhattisgarh.

**---- Respondents**

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|---------------------------|---|----------------------------------------------------------------------------------|
| For Petitioner            | : | Shri Pramod Verma, Sr. Advocate with Shri Vimlesh Bajpai, Advocate.              |
| For Respondent No.1       | : | Shri Nirmal Kumar Shukla, Sr. Advocate with Shri Prasun Kumar Bhaduri, Advocate. |
| For Respondent/State No.2 | : | Shri Ashish Shukla, Govt. Advocate.                                              |

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

**27/07/2017**

Heard.

1. Learned counsel for the petitioner submits that she filed a written complaint in P.S. Chakarbhata on 13.01.2015, alleging in it that at about 1:30 p.m. in the afternoon, she met with respondent No.1 to have some discussions, during which respondent No.1 misbehaved, used abusive language and pushed her with hands and also threatened her. Feeling insulted, she filed a complaint and requested for action to be taken against respondent No.1. to P.S. Chakarbhata reported under Section 155 of Cr.P.C was given by P.S. Chakarbhata that no offence is made out.

2. Petitioner filed an application under Section 156 (3) of Cr.P.C. before the Court of Judicial Magistrate First Class, Bilha on 21.07.2015 praying for direction be issued to the concerned police-station to lodge FIR against respondent No.1 for offence under Section 354 of IPC.
3. The Court of Judicial Magistrate First Class, Bilha passed an order dated 17.08.2015 and has dismissed the application of the petitioner. This order was challenged before the Court of Additional Sessions Judge (F.T.C.), Bilaspur in revision petition. An order was passed dated 01.10.2015 in unregistered Revision Petition holding that the Court of Sessions does not have jurisdiction to entertain revision petition for an order passed on application under Section 156(3) of Cr.P.C. referring to the judgment passed in Amarnath Agrawal Vs. Jai Singh Agrawal and others in WPCR No.116/2013 & 149/2014.
4. It is submitted by counsel for petitioner that the order passed by the Courts below is bad in law. The complaint made by the petitioner discloses commission of cognizable offence, hence, it is submitted that the revisional Court below has misconceived the order passed by this Court in Amarnath Agrawal (supra), hence, appropriate order may be passed.
5. Counsel for respondent No.1 submits that there is no illegality in the orders passed by the Courts below. The complaint made by the petitioner on 13.01.2015 does not disclose commission of any cognizable offence. The complaint made by petitioner was frivolous, any action taken or proposed to be taken would itself amount to abuse of process of law. It is clearly demonstrated that the first complaint made to the police on 13.01.2015 (**Annexure P/2**), then the application was filed before the Court after lapse of two months, was improved in contents. The enquiry report was called from P.S. Chakarbhata on the application filed by the petitioner and the report RR/1 dated 07.09.2015 was submitted before the Court in which the P.S. Chakarbhata has clearly reported that no offence is made out.
6. Reliance has been placed on the judgments of **Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand)** reported in **(2006) 8 Supreme Court Cases 560**, **Ramdev Food Products Private Limited Vs. State of Gujarat** reported in **(2015) 6 Supreme Court Cases 439**, **Priyanka**

***Shrivastava and another Vs. State of Uttar Pradesh and Ors.*** reported in **(2015) 6 Supreme Court Cases 287**, ***Raju Pandurang Mahale Vs. State of Maharashtra*** reported in **AIR 2004 Supreme Court 1677**.

7. In reply, reliance has been placed on the judgment of Allahabad High Court in ***Nirmal Singh Vs. State of U.P & Ors.***, reported in **1978 CRLJ 226**.
8. Before advertng on grounds raised in the petition, the serious question to be considered in this case is whether the order passed by the Sessions Court holding that Sessions Court does not have revisional jurisdiction over any order passed under Section 156(3) of Cr.P.C., needs consideration.
9. In the judgment of this Court Amarnath Agrawal (supra) in W.P.(Cr.) No.149/14 and W.P.(Cr.) No.116/13 between the same parties dated 10.02.2015, it was observed as under :

“The moot question is if a revision application against mere registration of FIR by the police is not maintainable whether such revision would be held maintainable when the Magistrate only directs registration of FIR. In the opinion of this Court, the answer is an emphatic No. Exercise of revisory power conferred by the Court under Section 397 read with Section 401 of the Code would occasion when there is an order passed by the competent court, which is not interlocutory in nature, however, the said power cannot be exercised to quash the FIR or investigation because such power can be exercised only by the High Court under Section 482 of the Code or under Article 226/227 of the Constitution of India. If the revision application is considered to be maintainable before the Sessions Court against an order passed by the Magistrate under Section 156(3) and if such revision is allowed it would have effect of quashing the FIR, therefore, if the Sessions Court has no such powers otherwise, it cannot do so by entertaining a revision against an order passed by the Magistrate under Section 156(3) of the Code.”

10. Further, in the same judgment it was observed in the last segment of para 21 as under :

“On the complaint reading in the judgment it is clearly understood that whether any Magistrate places an order to register FIR and investigate the case, in such cases the Sessions Court shall have no jurisdiction to entertain the revision petition because in case if, the revision succeeds then the Sessions Court is not clothed with power to quash the FIR. This case is differently placed

where the Magistrate has rejected the application under Section 156(3) of Cr.P.C. denying the prayer made by the petitioner for passing an order about registration of FIR and investigating the case by the police, hence, the prayer in the application under Section 156(3) of Cr.P.C. is denied in that case such order attained finality and the Sessions Court in revisional jurisdiction shall have power to exercise the revisional jurisdiction and come to a conclusion either by allowing the revision or by rejecting the revision petition, because if the revision petition is allowed in that case the Magistrate concerned shall be directed by the revisional court to reconsider the application under Section 156(3) of Cr.P.C.”

11. For the reasons aforesaid, it is found that the order passed by the revisional Court below is misconceived because the ratio of the judgment of this Court in Amarnath (supra) has not been followed in its true sense. It is clear that when a Magistrate passes order on application under Section 156(3) of Cr.P.C. for registering FIR and investigating the case, such order if entertained in a revision, cannot be set aside by the Sessions Court. But the case would be different, when a Magistrate rejects the application under Section 156(3) of Cr.P.C., in such a case the ratio laid down in Amarnath (supra) shall not be applicable and the Court of Sessions shall be competent to entertain and decide the revision petition. On the basis of the reasons aforementioned and the finding arrived at in this petition, there is no need to go into the merits of the case because the revisional jurisdiction is yet to be exercised by the Sessions Court below.

12. Accordingly, this petition is allowed with modification and the order passed by the Additional Sessions Judge (F.T.C.), Bilaspur dated 01.10.2015, is hereby set aside.

13. The matter is remanded back to the Sessions Court with a direction to hear the parties, consider and decide afresh the revision petition filed by the petitioner.

14. Accordingly, the petition stands disposed off.

Sd/-  
(**Rajendra Chandra Singh Samant**)  
JUDGE

