

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No.683 of 2015

- Dhirendra Kumar Shukla S/o Rajendra Narayan Shukla R/o Purani Basti, Raipur Tah. And District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Sadhu Ram Khelwar S/o Jagatpal Khelwar Aged About 47 Years R/o Devpuri, Raipur Tah. And District Raipur Chhattisgarh.
2. Shrimati Birjhha Bai Khelwar W/o Sadhu Ram Khelwar Aged About 45 Years R/o Devpuri, Raipur Tah. And District Raipur Chhattisgarh.

---- Respondents

For Petitioner : Shri Girdhari Lal Verma, Advocate
For Respondents : Shri P. K. Patel, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

21/03/2017

Heard on I.A.No.1 & I.A.No.2, applications for taking documents on record.

2. The applications [I.A.No.1 & I.A.No.2] are considered and allowed. The documents are taken on record.

3. This petition under Section 482 of Cr.P.C. has been preferred by the petitioner against order dated 23-03-2015 passed by the Additional Sessions Judge, Raipur, in Criminal Revision No.96/2014, whereby the learned Revisional Court has remanded the case to the Magistrate for proper consideration on the aspect as to whether a prima facie case of commission of offences under Section 511 & 283 of IPC, for which, cognizance was not taken, is made out or not.

4. Learned counsel for the appellant argued that though the Revisional Court has directed the Magistrate to apply its mind on the material on record and then decide as to whether a case for taking cognizance of offences under Sections 511, 283, 411 & 432 of IPC is made out or not, grievance of the petitioner is that for taking cognizance for alleged commission of offence, Section 392 of IPC has been ignored from consideration. He submits that on this aspect, the learned Revisional Court has not recorded any finding whatsoever. He next submitted that on the basis of complaint and the preliminary statements, a prima facie case is made out for taking cognizance of commission of offence under Section 392 of IPC as well.

5. On the other hand, learned counsel for the respondents submitted that in view of the complaint and the preliminary statements, no prima facie case is made out for taking cognizance of commission of offence under Section 392 of IPC, therefore, the Court below has rightly not considered this aspect.

6. A perusal of order passed by the learned Revisional Court discloses that the revisional Court was satisfied that the Magistrate has not assigned reason or disclosed application of mind to the material on record as to whether offence under Sections 511, 431, 432 & 283 of IPC is made out or not. The order is silent with regard to aspect as to whether prima facie case for taking cognizance of commission of offence under Section 392 of IPC is made out or not. This presumably led the petitioner to file revision petition. The revisional Court having taken the view that the Magistrate has not applied its mind nor recorded sufficient reasons for taking cognizance of various offences, it was in the interest of justice that the Revisional Court directed the Magistrate to apply its mind and consider the material on record placed before the Magistrate by the complainant and thereafter, pass a speaking order with regard to issue whether or not, a prima facie case for taking cognizance of commission of

offence under Section 392 of IPC is made out or not.

7. It is made clear that this Court has not commented upon the merits of the case. It is directed that the learned Magistrate shall decide the issue strictly on the basis of material placed before it in accordance with law.

8. With the aforesaid direction, this petition is finally disposed off.

SD/-
(Manindra Mohan Shrivastava)
Judge