

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.770 of 2015**

Firoz Khan S/o Farukh Kabadi, aged about 30 years, R/o village Navagarh,
PS Ambikapur, District Surguja (CG).

---- **Petitioner**

Versus

1. State of Chhattisgarh through the Station Incharge, PS Kotwali, Ambikapur, District Surguja (CG).
2. Uma Pandey W/o Shri Sunil Kumar Pandey, A/o 45 years, R/o Agrasen Ward, PS & Tehsil Ambikapur, Distt. Surguja (CG).

---- **Respondents**

For Petitioner
For respondent/State
For respondent No.2

Shri Prateek Sharma, Advocate.
Shri OP Sahu, Govt. Advocate.
Shri Amarnath Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

17/02/2017

1. The present petition under Section 482 CrPC has been preferred assailing the order dated 14.08.2015 passed in Criminal Revision No.44/2015 by the 4th Additional Sessions Judge, Ambikapur. Vide the said impugned order, the revisional court has upheld the order of Chief Judicial Magistrate, Ambikapur, in Criminal Case No.861 of 2015 dated 10.07.2015 whereby the CJM has refused to accept the closure report submitted by the investigating agency and have ordered for registration of offence under Sections 452, 354 and 506-B IPC against the present petitioner and other accused persons named in the complaint and have also ordered for issuance of bailable warrant against the petitioner.
2. Learned counsel appearing for the petitioner assailing the impugned orders submits that the courts below have committed an error of law

inasmuch treating the Khatma report to be a proceeding under Section 156(3) CrPC. According to him, it is a case where the investigating agency have on more than one occasion reached to a conclusion that no offence whatsoever is made out. He further submits that it is totally a misuse of process of law which has been invoked by the complainant, and therefore, prayed for setting aside of the said order impugned. According to him, it is a case where the report of the investigating agency is very clear that no offence is made out and thus, they had filed the closure report. The fact for consideration in a proceeding under Section 156(3) CrPC is entirely different from one which are required to be considered under Section 190 CrPC.

3. According to petitioner, the CJM has proceeded as if he was hearing a case under Section 156(3) of CrPC not realizing the fact that infact it is power under Section 190 CrPC which he was exercising. Therefore, the factors for consideration under Section 190 CrPC would be entirely different. Relying upon the decision of Supreme Court in case of Dr.Mrs. Nupur Talwar Vs. CBI, Delhi & Others, reported in 2012(2)SCC 188, counsel for the petitioner submitted that while exercising the powers under Section 190 CrPC the court below has to exercise the judicial discretion and apply his mind to the facts and material available before him. He could not have blindly taken the contents of complaint to be gospel truth and proceed further with the criminal prosecution ignoring the report of the police authorities obtained after a thorough investigation.
4. Another ground which the petitioner intends to take into consideration

is the conduct of the complainant as she has in the past also involved in various criminal cases under different persons and that she is a political activist. Therefore, the complaint is admittedly a political motivated complaint, and as such the complaint lodged by the complainant should not have been given due weightage by the court below while ordering for taking cognizance of the offence and issuing bailable warrants against the petitioner and other accused persons. These aspects have also not been considered by the revisional court and for this reason also the order passed by the revisional court is bad in law.

5. Counsel for the petitioner submits that there were ample evidence before the investigating agency which reflected non involvement of the petitioner in the alleged crime and that he was not present near the place of occurrence as could have been conducted from the mobile tower location of the petitioner. Thus, the observations of the court below at this juncture is not proper, legal and justified and the two orders passed by the courts below deserve to be set aside/quashed.
6. Counsel for the respondent, however, opposing the petition submits that a plain reading of two orders of the court below i.e. order of CJM dated 10.07.2015 and again which has been affirmed by the revisional court vide its order dated 14.08.2015 itself are self explanatory and therefore, there is no scope for interference left in the impugned orders.
7. Having heard the rival contentions put forth on either side and on perusal of two orders under challenge, if we take into consideration the

nature of the complaint which has been levelled against the present petitioner and the other accused persons is the fact that the petitioner along with other accused persons forcefully entered into the house of the complainant and gave a threat of life and also used abusive and filthy language. Further, it is also a case where the allegation is that the accused persons is said to have tried to outrage the modesty of the complainant. It is only when she raised an alarm and on neighbors gathering, the accused persons had fled away. Further, from the proceedings drawn it appears that apart from the complainant there was a Chowkidar who has supported the case of the complainant. Thus, from the facts generated from the investigation, it cannot be said that it is a case of no prima facie evidence. Rather, it is a case where there is some material available which were obtained during the course of the investigation.

8. In the given factual matrix of the case, if we look into the order passed by the CJM on 10.07.2015 it clearly reflects that the CJM infact has minutely taken into consideration the entire complaint and the investigation record. In addition, the CJM has also kept in mind the principle laid down by the Supreme Court in case of Sundeep Kumar Bafna Vs. State of Maharashtra, reported in 2014 AIR SC 1745.
9. A plain reading of said two orders passed by the courts below would reveal that both the courts below had scrutinized the contents of the compliant and the investigation report and thereafter have reached to the conclusion that there appears to be some material available against the accused persons. Therefore, the courts below did not think

it appropriate to grant permission for closure of the complaint. Once when the Magistrate found that prima facie there is material available against the accused persons, it means that there are materials available in the case diary with which the cognizable offence can be registered.

10. In case if the Magistrate has exercised its power which is duly conferred upon him under Section 190 CrPC and the same being a discretionary power, it cannot be said to be bad in law or incorrect in any manner. Whatever the contention which the petitioner intends to adduce for not accepting the closure report, is the defence of the petitioner-accused and which can be considered by the concerned court in the course of the trial and it cannot be heard at this stage of proceeding. It is settled law that the powers under Section 482 CrPC has to be exercised very sparingly and not as a matter of routine. The petitioner can take all these objections which he has raised in this petition at the time of framing of charge and can even move an application for discharge before the concerned trial court.
11. In view of the same, this court does not find any strong case made out by the petitioner to interfere with the orders impugned invoking the extraordinary discretionary jurisdiction of this court under Section 482 CrPC.
12. The petition, thus, being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
Judge