

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 1104 of 2014

N.L. Soni S/o Late P.d. Soni, Aged About 70 Years, Karyabarini Sachiv, India Church Council of the Disciple of Christ, R/o Civil Lines, Bilaspur C.G.

---- Petitioner

Versus

1. Jaideep Rabinson, S/o A.F. Rabinsaon Aged About 46 Years R/o Vidyanagar Behind Shiv Mandir, Police Station Tarbahar, Bilaspur C.G.
2. Ajay Dharmraj S/o Late R.J. Dharmraj R/o Rajbhawan Gate No. Civil Lines, Raipur C.G.
3. A.K. Nath S/o Late Yusuf Nath R/o Mission Boys Hostel, Jarhabhata, Bilaspur C.G.
4. V.N. Melwa S/o Late Neson Melwa Aged About 80 Years R/o Near Charan Aata Chakki, Tarbahar, Bilaspur C.G.
5. Prem Masih W/o Rahmat Masih Aged About 60 Years Manging Director, U.C.N.I.T.A. Mumbai 19 Kranti Marg Mumbai (Maharashtra)
6. E. Enos Das Pradhan S/o Late I.D. Pradhan C.N.I. Bhawan 16, Pantid Pant Marg, New Delhi
7. Alvin Masih S/o Saadik Masih C.N.I. Bhawn, 16 Pandit Pant Marg New Delhi

---- Respondents

For petitioner- Shri M.K. Bhaduri, Advocate.
For respondents No.1 to 4 – Shri Rajeev Bharat, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

07/11/2017

Heard.

1. Facts of this case are that initially complaint was filed by the petitioner under Sections 419, 420, 467, 468, 471 and 120-B of IPC and the prayer was made that the respondents against whom complaint was filed the investigation be carried out by directing the police to investigate under Section 156(3) of Cr.P.C.
2. Said prayer to call for the report to invoke power under section 156 (3) of Cr.P.C. was dismissed by the Judicial Magistrate by an order dated 26/04/2014. Said order was subject of challenge before the revisional

court and the revisional court in Criminal Revision No.111/2014 by an order dated 16th September, 2014 has directed the trial court to invoke power under section 156(3) of Cr.P.C. and pass suitable orders. Thereafter, when the case was remanded, trial court dismissed the petition on the ground that provisions of 156 (3) of Cr.P.C. is not applicable.

3. Learned counsel for the petitioner would submit that order dated 17/11/2014 is in direct violation in the teeth of the order of the revisional court and under the provisions of 156(3) of Cr.P.C. Magistrate can direct the police to register FIR and in this case since report of 156(3) Cr.P.C. was awaited, prayer cannot be dismissed at the threshold.

4. Learned counsel for respondents No.1 to 4 would submit that complaint is still pending, therefore no prejudice has been caused.

5. As has been laid down in case of **Hemant Yashwant Dhage Vs. State of Maharashtra & Ors.** reported in **(2016) 6 SCC 273** Hon'ble Supreme Court has reiterated the principle in case of **Mohd. Yousuf v. Afaq Jahan** reported in **(2006) 1 SCC 627** and principally laid down that invoking power under section 156(3) of Cr.P.C. Magistrate can direct police to register FIR and even where a Magistrate does not do so in explicit words but directs for investigation under section 156(3) of Cr.P.C., the police should register an FIR. Further similar view has been reiterated in case of **Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage & Ors.** reported in **(2016) 6 SCC 277**. It was held that if on an application under section 156(3) Cr.P.C. when Magistrate is prima facie satisfied that cognizable offence is made out he can direct registration of the FIR and if FIR has been registered, issue a direction for proper investigation to be made, which includes, if he deems it necessary, recommending change of investigating officer and further monitor the investigation.

6. In this case specific direction was given by the revisional court to invoke power to the Judicial Magistrate under section 156(3) Cr.P.C. by an

order dated 16th September, 2014 in exercise of the revisional power. Thereby the issue in respect of invoking power under section 156(3) of Cr.P.C. in its true sense and object was directed to be reconsidered. However the JMFC by an order dated 17/11/2014 has dismissed the petition by holding that order directing investigation under section 156(3) of Cr.P.C. has not been sent. The order of the revisional court was to pass order by magistrate whether the provisions of section 156(3) of Cr.P.C. to be followed or not. However the same still remains undecided. Therefore, in view of the direction of order of revisional court the JMFC is further directed to comply the order of the revisional court and pass suitable orders with respect to invoking power under section 156(3) of Cr.P.C. in view of principles laid down by Supreme Court (supra).

7. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE