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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P.No.591 of 2014

Laxmikant Harlalka, S/o Shri Hanuman Prasad Harlalka, Aged about 58 years, Occupation-Businessman, R/o S-12, Green Paradise, Raipur, Vishala Nagar, Raipur, Distt.Raipur (CG)

----Petitioner

Versus

1. Firoz Khan, S/o Sikandar Khan, Aged about 30 years, Occupation-Advocate, R/o Ward No.07, Lalpur Road, Bagbahra, Post and Police Station-Bagbahra, Distt.Mahasmund (CG)
2. D.D. Mahant, S/o Balram Das Mahant, Aged about 56 years, Occupation-Govt. Service, At present Tahsildar, Basna, Tahsil-Basna, Distt.Mahasamund (CG)
3. Shankar Lal Sinha, S/o Not Known to the petitioner, Aged about 50 years, Occupation-Govt. Service, At present Naib Tahsildar, Mainpat, Surguja, Distt.Surguja (CG)
4. Smt.Sohta Bai, W/o Jodhan Tandon, Caste-Satnami, Aged about 60 years, Occupation-Housewife, R/o Manabi, Post-Bakma, Police Station-Bagbahra, Tahsil-Bagbahra, Distt.Mahasamund (CG)

---- Respondents

Cr.M.P.No.685 of 2014

1. Nikunj Harlalka, S/o Ramakant Harlalka, Aged about 25 years, R/o S-12, Green Paradise, Raipur, Distt.Raipur (CG) (General Power of Attorney of petitioner No.2)
2. Laxmikant Harlalka, S/o Shri Hanuman Prasad Harlalka, Aged about 58 years, Occupation-Businessman, R/o S-12, Green Paradise, Raipur, Distt.Raipur (CG)

----Petitioners

Versus

1. Firoz Khan, S/o Sikandar Khan, Aged about 30 years, Occupation-Advocate, R/o Ward No.07, Lalpur Road,

Bagbahra, Post and Police Station-Bagbahra, Distt.Mahasmund (CG)

2. D.D. Mahant, S/o Balram Das Mahant, Aged about 56 years, Occupation-Govt. Service, At present Tahsildar, Basna, Tahsil-Basna, Distt.Mahasamund (CG)
3. Shankar Lal Sinha, S/o Not Known to the petitioner, Aged about 50 years, Occupation-Govt. Service, At present Naib Tahsildar, Mainpat, Surguja, Distt.Surguja (CG)
4. Chana Bai W/o Mehattar, Caste-Satnami, Aged about 36 years, Occupation-Housewife, R/o Village-Banskanta, Post-Komakhan, Police Station-Bagbahra, Tahsil-Bagbahra, Distt.Mahasamund (CG)

---- Respondents

Cr.M.P.No.686 of 2014

1. Nikunj Harlalka, S/o Ramakant Harlalka, Aged about 25 years, R/o S-12, Green Paradise, Raipur, Distt.Raipur (CG) (General Power of Attorney of petitioner No.2)
2. Laxmikant Harlalka, S/o Shri Hanuman Prasad Harlalka, Aged about 58 years, Occupation-Businessman, R/o S-12, Green Paradise, Raipur, Distt.Raipur (CG)

----Petitioners

Versus

1. Firoz Khan, S/o Sikandar Khan, Aged about 30 years, Occupation-Advocate, R/o Ward No.07, Lalpur Road, Bagbahra, Post and Police Station-Bagbahra, Distt.Mahasmund (CG)
2. D.D. Mahant, S/o Balram Das Mahant, Aged about 56 years, Occupation-Govt. Service, At present Tahsildar, Basna, Tahsil-Basna, Distt.Mahasamund (CG)
3. Shankar Lal Sinha, S/o Not Known to the petitioner, Aged about 50 years, Occupation-Govt. Service, At present Naib Tahsildar, Mainpat, Surguja, Distt.Surguja (CG)
4. Tulsi Bai W/o Gurubaru, Aged about 60 years, Caste-Raut, R/o Village-Banskanta, Post-Devri, Police Station-Bagbahra, Tahsil-Bagbahra, Distt.Mahasamund (CG)

---- Respondents

Cr.M.P.No.1005 of 2014

Shankarlal Sinha, S/o. Mohanlal Sinha, aged about 30 years, Occupation Government servant, At present Nayab Tahsildar Mainpart, Surguja, Police Station and Post Mainpat, Civil and Revenue District Surguja (CG)

----Petitioner

Versus

1. Firoz Khan, Son of Sikandar Khan, aged about 30 years, Ward No.7, Lalpur Road, Bagbahra, Post and Police Station-Bagbahra, District Mahasmund (CG)
2. D.D. Mahant (Dev Dhar Mahant), Son of Shri Balram Das Mahant, aged about 58 years, Occupation-Government servant, At present Tahsildar, Bijapur, Police Station and Post Bijapur, Civil and Revenue District Bijapur (CG)
3. Smt. Tulsibai D/o. Gurubaru, aged about 60 years, Occupation Housewife, R/o. Village Banskata, Post Devri, Police Station Komakhan, Tahsil Bagbahra, Civil and Revenue District Mahasamund (CG)
4. Laxmi Kant Harlalka son of Hanuman Prasad Harlalka, aged about 58 years, Occupation Business, Resident of S-12, Green Paradise, Raipur, Vishala Nagar, Police Station and Post Raipur, District Raipur (CG)
5. Nikunj Harlaka son of Ramakant Harlalka, Resident of S-12, Green Paradise Raipur, Vishala Nagar, Police Station and Post Raipur, Civil and Revenue District Raipur (CG)

---- Respondents

Cr.M.P.No.1061 of 2014

Shankarlal Sinha, S/o. Mohanlal Sinha, aged about 30 years, Occupation Government servant, At present Nayab Tahsildar Mainpart, Surguja, Police Station and Post Mainpat, Civil and Revenue District Surguja (CG)

----Petitioner

Versus

1. Firoz Khan, Son of Sikandar Khan, aged about 30 years, Ward No.7, Lalpur Road, Bagbahra, Post and Police Station-Bagbahra, District Mahasmund (CG)
2. D.D. Mahant (Dev Dhar Mahant), Son of Shri Balram Das Mahant, aged about 58 years, Occupation-Government servant, At present Tahsildar, Bijapur, Police Station and Post Bijapur, Civil and Revenue District Bijapur (CG)
3. Smt. Sohta Bai, W/o. Jodhan Tondon, aged about 60 years, R/o. Manbai Post Bakma, Police Station Bagbahra, Tahsil Bagbahra, Mahasamund, District Mahasamund (CG)
4. Laxmi Kant Harlalka son of Hanuman Prasad Harlalka, aged about 58 years, Occupation Business, Resident of S-12, Green Paradise, Raipur, Vishala Nagar, Police Station and Post Raipur, District Raipur (CG)

---- Respondents

Cr.M.P.No.1113 of 2014

Shankarlal Sinha, S/o. Mohanlal Sinha, aged about 30 years, Occupation Government servant, At present Nayab Tahsildar Mainpart, Surguja, Police Station and Post Mainpat, Civil and Revenue District Surguja (CG)

----Petitioner

Versus

1. Firoz Khan, Son of Sikandar Khan, aged about 30 years, Ward No.7, Lalpur Road, Bagbahra, Post and Police Station-Bagbahra, District Mahasmund (CG)
2. D.D. Mahant (Dev Dhar Mahant), Son of Shri Balram Das Mahant, aged about 58 years, Occupation-Government servant, At present Tahsildar, Bijapur, Police Station and Post Bijapur, Civil District Dantewada and Revenue District Bijapur (CG)
3. Smt. Chana Bai W/o Mahetar Satnami, aged about 36 years, R/o Village-Baskata, Post-Komakhan, Tahsil-Bagbahra, Mahasamund, Civil & Revenue District Mahasamund (CG)
4. Laxmi Kant Harlalka son of Hanuman Prasad Harlalka, aged about 58 years, Occupation Business, Resident of S-12, Green

Paradise, Raipur, Vishala Nagar, Police Station and Post Raipur, District Raipur (CG)

5. Nikunj Harlaka son of Ramakant Harlalka, Resident of S-12, Green Paradise Raipur, Vishala Nagar, Police Station and Post Raipur, Civil and Revenue District Raipur (CG)

---- Respondents

Cr.M.P.No.1154 of 2014

D.D. Mahant (Deodhar Mahant), S/o. Late Balram Das Mahant, aged about 58, By Caste Panka, Posted as Tahsildar, R/o Block Colony, Bijapur, Tahsil Bijapur, Civil & Revenue District Bijapur (CG)

----Petitioner

Versus

1. State of Chhattisgarh, Through: Police Station Komakhan, District Mahasamund (CG)
2. Firoz Khan S/o Sikandar Khan, Aged about 32 years, R/o Ward No.7, Lalpur Road, Bagbahra, PS and Tahsil Bagbahra, District Mahasamund (CG)

---- Respondents

Cr.M.P.No.1155 of 2014

D.D. Mahant (Deodhar Mahant), S/o. Late Balram Das Mahant, aged about 58, By Caste Panka, Posted as Tahsildar, R/o Block Colony, Bijapur, Tahsil Bijapur, Civil & Revenue District Bijapur (CG)

----Petitioner

Versus

1. State of Chhattisgarh, Through: Police Station Komakhan, District Mahasamund (CG)
2. Firoz Khan S/o Sikandar Khan, Aged about 32 years, R/o Ward No.7, Lalpur Road, Bagbahra, PS and Tahsil Bagbahra, District Mahasamund (CG)

---- Respondents

And

Cr.M.P.No.1156 of 2014

D.D. Mahant (Deodhar Mahant), S/o. Late Balram Das Mahant, aged about 58, By Caste Panka, Posted as Tahsildar, R/o Block Colony, Bijapur, Tahsil Bijapur, Civil & Revenue District Bijapur (CG)

----Petitioner

Versus

1. State of Chhattisgarh, Through: Police Station Komakhan, District Mahasamund (CG)
2. Firoz Khan S/o Sikandar Khan, Aged about 32 years, R/o Ward No.7, Lalpur Road, Bagbahra, PS and Tahsil Bagbahra, District Mahasamund (CG)

---- Respondents

For Petitioners	: Mrs.Smita Jha, Advocate in Cr.M.P.Nos. 591, 685 and 686 of 2014
For Petitioner	: Mr.Manoj Paranjape, Advocate in Cr.M.P.Nos.1005, 1061 and 1113/2014
For Petitioner	: Mr.Varun Sharma, Advocate in Cr.M.P.Nos.1154, 1155 and 1156 of 2014
For State	: Mr.Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/05/2017

1. Since common facts are involved in these batch of petitions, they were heard analogously and being decided by this common order.
2. Complainant-Shri Firoz Khan filed three applications/complaints under Section 156 (3) of the CrPC against Tahsildar-D.D. Mahant, Naib-Tahsildar Shankarlal Sinha, original owners of the land in dispute - Smt.Sohta Bai, Tulsi Bai and Chana Bai and purchaser-Laxmikant Harlalka alleging that the land in question was allotted to Smt.Sohta Bai bearing Kh.No.615, Chana Bai bearing Kh.No.576 and Tulsi Bai bearing Kh.No.617 on lease and said lands were not transferable without prior permission of the Collector, but the accused landowners transferred the land in contravention

of applicable provisions of law to Laxmikant Harlalka on 14.6.2011 and 11.7.2011. Naib-Tahsildar Shri Shankarlal Sinha issued kistabandh khatouni and Tahsildar Shri D.D. Mahant certified the transfer in the revenue records, which is the act of forgery and thereby they have committed the offence punishable under Sections 420, 467, 468, 471 and 120b/34 of the IPC.

3. Learned trial Magistrate on the said applications recorded the statement of complainant-Firoz Khan on 28.4.2014 and vide order dated 16.5.2014 entertained the applications/complaints under Section 156(3) of the CrPC and recorded a finding that the accused persons have transferred the land in question by forged and fabricated documents and therefore, offence under Sections 420, 467, 468, 471 and 120B/34 of the IPC be registered against all four accused persons and thereby granted applications under Section 156(3) of the CrPC.
4. Against that order, ShankarLal Sinha and D.D. Mahant preferred the revision petitions before the Revisional Court, however, the Revisional Court has dismissed the revisions, against which, they have preferred the petitions under Section 482 of the CrPC. Petitioners-Laxmikant Harlalka and Nikunj Harlalka directly preferred the petitions under Section 482 of the CrPC before this Court. However, Smt.Sohta Bai, Chana Bai and Tulsi Bai have not preferred any revision or

petition. All the petitions have been clubbed and are being decided by this common order as common question of law and facts are involved in these batch of petitions.

5. Learned counsel appearing for the petitioners would submit that once the trial Magistrate has decided to take recourse under Chapter XV of the CrPC, then the applications under Section 156(3) of the CrPC should not have been allowed by him. They would further submit that learned trial Magistrate after application of mind recorded specific finding that the accused persons have committed the offences would show in the order shows that cognizance has been taken and as such, the impugned order deserves to be set aside on this ground only. They would further submit that the learned Revisional Court did not look into the matter in the proper prospective, therefore, the order of the trial Court as well as the Revisional Court deserves to be set aside.
6. No one appears on behalf of complainant-Firoz Khan though notice has been served to him.
7. It is not in dispute that these applications under Section 156(3) of the CrPC were filed by complainant-Firoz Khan on 12.12.2011, in which learned trial Magistrate decided to proceed under Chapter XV of the CrPC and recorded the statement of complainant-Firoz Khan on 28.4.2014 and 16.5.2014, but thereafter passed an order on 16.5.2014 and granted that applications under Section 156(3) of the CrPC

after applying his judicial mind and recorded the specific finding that the accused persons have transferred the land by fabricated documents and also directed to register the offence against them under Sections 420, 467, 468, 471 and 120B/34 of the IPC, thus, learned Magistrate entered into the merits of the case.

8. In connection reference may be made to the judgment of the Supreme Court of **Anju Chaudhary Vs. State of Uttar Pradesh and another**¹ in which Their Lordships in **Mona Panwar Vs. High Court of Judicature of Allahabad**² have held as under:-

“40. Still another situation that can possibly arise is that the Magistrate is competent to treat even a complaint termed as an application and pass orders under Section 156(3), but where it takes cognizance, there it would have to be treated as a regular complaint to be tried in accordance with the provisions of Section 200 onwards falling under Chapter XV of the Code. There also the Magistrate is vested with the power to direct investigation to be made by a police officer of such other person as he things fit for the purposes of deciding whether or not there is sufficient ground for proceeding. This power is restricted and is not as wide as the power vested under Section 156(3) of the Code. The power of the Magistrate under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before the cognizance is taken. In other words, Section 202 would apply only to cases where Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances where the Magistrate, before taking cognizance of the case himself, chooses to order a pure and simple investigation under Section 156(3) of the Code. These cases would fall in different class. This view was also taken by a Bench of this Court in Rameshbhai Pandurao Hedau v. State of Gujarat³. The distinction

¹ (2013) 6 SCC 384

² (2011) 3 SCC 496

³ (2010) 4 SCC 185

between these two powers had also been finally stated in the judgment of this Court in *Srinivas Gundluri Vs. SEPCO Electric Power Construction Corpn.*⁴ wherein the Court stated that:

“23..... to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the the police for investigation.

But where it takes cognizance and decides as to whether or not there exists a ground for proceeding any further, then it is a case squarely falling under Chapter XV of the Code.

41. Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further.....”

9. Similar is the proposition of law laid down by the Supreme Court in the matter of **Ramdev Food Products Private Limited Vs. State of Gujarat**⁵, in which the Supreme Court has held as under:-

“22. Thus, we answer the first question by holding that:

22.1 The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered

⁴ (2010) 8 SCC 206

⁵ (2015) 6 SCC 439

appropriate to straightaway direct investigation, such a direction is issued.

22.2 The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in Lalita Kumari Vs. State of U.P.⁶ may fall under Section 202.

22.3 Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

10. Recently, the Supreme Court in the matter of **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others**⁷ has as under:-

“24. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.⁸, the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again: (Madhao v. State of Maharashtra⁹),

“18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint

⁶ (2014) 2 SCC 1

⁷ (2015) 6 SCC 287

⁸ (2005) 7 SCC 467

⁹ (2013) 5 SCC 615

to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

11. Thus, applying the principle of law laid-down by the Supreme Court in the above-stated judgments (*supra*), if the facts of the present case are examined, it is quite vivid that the Magistrate did not consider it appropriate to invoke Section 156(3) of the CrPC decided to record the statement of complainant-Firoz Khan by invoking Chapter XV of the CrPC and thereby recorded the statement of the complainant and once learned Magistrate has invoked Chapter XV of the CrPC, he could not have reverted back to Section 156(3) of the CrPC.

12. The matter may be considered from one more angle. Applicant-Shri D.D. Mahant and applicant-Shri Shankarlal Sinha are government servants, their appointing authority is the State Government. The Supreme Court in the matter of **Anil Kumar and others Vs. M.K. Aiyappa and another**¹⁰ has held that direction to police for investigation under

¹⁰ (2013) 10 SCC 705

Section 156(3) of the CrPC cannot be ordered in absence of sanction for prosecution, which squarely applies to the facts of the present case. No such sanction was granted by the State Government and application under Section 156(3) of the CrPC has been granted directing investigation against Shri Sinha and Shri Mahanat, which is clearly impermissible in law.

13. As a fallout and consequence of the aforesaid, the impugned order passed by the Magistrate and affirmed by the Revisional Court are hereby quashed and consequent to which subsequent proceedings on the basis of the order of the Magistrate are also hereby quashed and application filed by complainant-Firoz Khan would stand rejected.

14. The petitions are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-