

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1291 of 2017

- Smt. Ishwari Devi Kushwaha W/o Triveni Kushwaha Aged About 40 Years R/o Zone 3 Street No. 12 Sector 11 Khursipar, Police Station Khursipar Bhilai Tehsil & District Durg Chhattisgarh. --- **Petitioner**

Versus

1. I. A. Khairani D/o Wasim Baks Aged About 40 Years (The Then Incharge - Mahila Thana - Durg) Currently Posted In Investigative Units on Crimes Against Women (I U C A W) , Durg District Durg Chhattisgarh.
2. Shri U B S Chouhan Aged About 50 Years City Superintendent of Police (As Mentioned In Impugned Order) (The Then C S P , Chawni, District Durg) Currently Posted As Addl. S P District Raigarh Chhattisgarh.
3. Shri M L Kotwari, Aged About 50 Years Additional Superintendent of Police Bhilai Nagar District Durg Chhattisgarh.
4. Shri Amit Kumar Aged About 50 Years The Then Superintendent of Police District Durg Chhattisgarh. --- **Respondents**

For the applicant : Mr. Jaideep singh Yadav Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

08.11.2017

1. This instant petition is against the order dated 14.09.2016 passed by the learned Addl. Sessions Judge, Durg, in Criminal Revision No.48/2016 whereby the order passed by the JMFC, Durg dated 14.12.2015 has been affirmed. The learned JMFC, Durg has dismissed the complaint filed by the petitioner/complainant seeking action against the accused respondents under sections 193, 195, 211, 500, 452, 323, 395, 120(B) of IPC.
2. As per the petitioner, on 25.07.2010 at about 6 o' clock while she was at her home along-with few female members who were part of an investment team, the respondents and other

police personnel forcibly entered into the house and the said 3 ladies and the daughter of petitioner were taken into police custody and were abused and assaulted and subsequently, the case was registered u/ss 3, 4, 5 of the Prevention of Immoral Traffic Act, 1956. After registration of the case which was numbered as 225/2010 and the charge sheet was filed wherein the JMFC, Durg, on 13.06.2012 acquitted the petitioner, her daughter, husband and other 3 ladies. Subsequently, the petitioner filed a complaint against the respondents that because of political rivalry, the petitioner and the family members were falsely implicated in the crime and the offence was not committed by the petitioners but otherwise the offence was committed by the respondent police officers.

3. Learned counsel for the petitioner would submit that the order passed by the JMFC as also the Sessions Court cannot be sustained as the court below failed to take into consideration the fact that respondent was working in the different jurisdiction i.e., Mahila Thana, Durg wherein she transgressed the jurisdiction of Khursipar, Bhilai and just to take vengeance, false allegations were attributed to the petitioner. Therefore, the orders of the courts below cannot be sustained.
4. Per contra, learned state Counsel opposes the said arguments.
5. Perused the order of the Additional Sessions Judge, Durg. Primarily, the complaint was dismissed on the principles that no sanction was taken by the petitioner from the State Government to proceed against the respondents who were discharging their official duties. Further perusal of the order

of the acquittal dated 13.06.2012 in Criminal Case No. 225 of 2010 would show that the acquittal of the petitioner and other accused was not honourable acquittal. In a case governing likewise situation, guidelines have been prescribed by the Supreme Court in ***AIR 2015 S.C. 2022 (D.T. Virupakshappa V. C. Subash*** which lays down that when the police exceeded in exercising its power during investigation of a criminal case, it cannot be stated that it was an individual act. It was held that u/s 197 of Cr.P.C., in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary.

6. In the instant case, even if the accused respondents have acted in excess of their duty but the examination of the criminal case wherein the petitioner and others were acquitted would show that the respondents in pursuance of reasonable action have discharged their official duty. If the contention of the petitioner is accepted that the Police have exceeded in exercising their power, then in such a case, the police shall be rendered teeth-less and it would difficult to maintain law and order. Therefore, I do not find any merit in the revision petition warranting interference by this Court.
7. Accordingly the petition has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**