

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1210 of 2016

- Ramkaran Agrawal S/o Kishan Lal Agrawal Aged About 70 Years R/o Bankimongra, Tahsil Katghora, District Korba Chhattisgarh

---- Petitioner

Versus

1. Sharifuddin Asarfi & Others S/o Aminuddin Asharfi Aged About 58 Years R/o Kudripara, Bankimongra, Tahsil Katghora, District Korba Chhattisgarh
2. Dinesh Agrawal S/o Govind Agrawal Aged About 40 Years R/o Main Road, Korba, R/o Bankimongra, Tahsil Katghora, District Korba Chhattisgarh
3. Santosh Agrawal S/o Mahaveer Agrawal Aged About 52 Years R/o Bankimongra, Tahsil Katghora, District Korba Chhattisgarh
4. Ashok Kumar Marbal Aged About 50 Years Tahsildar, Tahsil Office Katghora, District Korba Chhattisgarh
5. State Of Chhattisgarh Through Police Incharge - Bankimongra, Tahsil Katghora, District Korba Chhattisgarh

---- Respondents

For Petitioner	:	Shri Brijesh Singh and Shri Shushobhit Singh, Advocate.
For respondents No.1 to 4.	:	Shri Ratnesh Kumar Agrawal, Advocate.
For Respondent No.5/State	:	Shri Lav Sharma, Penal Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/07/2017

1. Heard.
2. This petition under Section 482 of Cr.P.C. has been brought challenging the impugned order passed by Additional Sessions Judge, Katghora, District Korba in Criminal Case No.29/2016 dated 24.08.2016 and prayer has been made to set aside the order passed by the Court below dated 24.8.2016 and 2.2.2016.
3. The petitioner filed an application under Section 156 (3) of Cr.P.C. before the Court of JMFC, Katghora. It was stated that petitioner is the owner of land

bearing khasra No.113/2, of area about 0.291 hectare in village Banki Mongra by virtue of a sale-deed dated 24.12.1962 and is continuously in possession. It was stated that non-applicant No.1 has transferred a portion of this land of 15x20 ft. to respondents No.2 & 3 on the basis of an agreement recorded in stamp of Rs.50/- on which respondents No.2 & 3 have raised a construction. An application was made to respondent No.4 Tahsildar, Katghora, who initiated proceeding, but believing on the oral statement of respondents No.2 & 3 he permitted them to raise construction, on the land in dispute. No steps were taken by the respondents No. 4 & 5 to initiate proceeding against other respondents on the basis of illegal transfer and illegal construction made in the land in question. Hence, it was prayed that order be passed for registration of offence under Sections 420, 467, 468, 193, 219/34 of IPC against the respondents.

4. The application under Section 156(3) of Cr.P.C. was rejected by the Judicial Magistrate First Class, Katghora on the basis that no documents were attached with the application to demonstrate the transfer made by respondent No.1 in favour of respondents No.2 & 3 and that the contents of the application does not disclose commission of any offence. This order was challenged 02.02.2016 before the Court of Additional Sessions Judge, Katghora in Revision Petition No.29/2016, in which by order dated 24.08.2016 the revision petition has been dismissed and petitioner has been advised to approach Civil Court.
5. Learned counsel for the petitioner submits that the petitioner is the owner of the land in question respondent No.1 projected himself as the owner of that land and transfer in favour of respondents No.2 & 3 illegally. The Court of JMFC, Katghora has accepted the final report submitted by the police without assigning any proper reasons, for this the police was required to register FIR on the basis of the application given, but has conducted an enquiry and submitted report. Hence, the procedure adopted by the Trial Court has been in contravention of the provision of Code of Criminal Procedure. It is prayed that the impugned orders be set aside and the police authorities be directed to register FIR and conduct investigation in the case.
6. Learned counsel for private respondents has submitted that the application of the petitioner under Section 156(3) of Cr.P.C. has been inquired into and as per the report submitted by P.S. Banki Mongra, District-Korba, there is only a civil dispute between the parties. The allegation of forging a document of title of transfer is not made out on the basis of merely a statement made by the

petitioner. No such document has been produced by the petitioner for examination before the Court or before the Police, hence, findings given by the revisional Court is proper that petitioners should approach the Civil Court.

7. Learned counsel for the State has opposed the petition and arguments submitted on behalf of petitioner.
8. The landmark judgment of Supreme Court in ***Priyanka Shrivastava and another Vs. State of U.P. and others*** reported in **2015 STPC (Web) 243 SC** as under:-

“Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the [SARFAESI Act](#), invokes the jurisdiction under [Section 156\(3\)](#) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.”

9. As per the documents submitted by the petitioner and the contents of the order passed by the Court of JMFC, Katghora, it appears that the Court below on receiving the application under Section 156(3) of Cr.P.C. directed P.S.-Banki Mongra, District-Korba to conduct an enquiry and submit report. Hence, for these reasons that no FIR was recorded and enquiry was conducted. On perusal of the report (**Annexure A/7**), it appears that there is serious dispute as to ownership and possession on the land in question between the petitioner and the private respondents. Petitioner had opportunity to submit documents of his title and the right claimed over the disputed property before the police, but he has opted not to produce any such documents, hence, after the submission of the report, the Court of Judicial Magistrate First Class, Katghora has dismissed the application for the reasons mentioned therein that there is no documentary proof to support the oral allegation made by the petitioner.
10. As per the grounds in this petition and the submission made, it appears that the order passed by the Magistrate on 23.07.2015 directing the police to inquire into the matter which should have been challenged by the petitioner, as this order did not speak of lodging FIR and investigating the offence alleged. Although, the words in the order dated 02.02.2016, demonstrate that application under

Section 156(3) of Cr.P.C. was decided and rejected, but this order appears to be in sense order of denial to take cognizance on the complaint.

11. In the result, it appears that although the course of proceeding adopted by the trial Court was not in accordance with the practice and adopted so far, but the guidance given in the Priyanka Shrivastava (supra) case permits that some preliminary enquiry can be made in such cases looking to the nature of the allegations made. It is a case in which the claim of petitioner on the land in question is challenged by the private respondents which clearly appears to be a civil dispute. To substantiate the allegation of commission of offence of forgery, the production of specific documents was a requirement and such production has never been made by the petitioner before the Courts below or before the police authorities when the enquiry was being conducted. Hence, for these reasons, no substance is found in this petition.

12. Accordingly, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE