

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 16 of 2018**

Smt. Vidya Devi Saraf W/o Late Shri Lakhan Lal Saraf, Aged About 80 Years R/o Kashyap Colony, Gali No. 5, P. S. City Kotwali, Tehsil Bilaspur, District Bilaspur Chhattisgarh.

--- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department Of Home (Police). Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur Chhattisgarh.
2. Inspector General of Police, Bilaspur Range, Bilaspur, District Bilaspur Chhattisgarh.
3. Superintendent of Police, Bilaspur, District Bilaspur Chhattisgarh.
4. Station House officer, City Kotwali, Bilaspur, District Bilaspur Chhattisgarh.
5. Radhe Shyam Saraf S/o Late Sohri Lakhan Lal Saraf Aged About 59 Years R/o Kashyap Colony, Gali No. 5, P. S. City Kotwali, Tehsil Bilaspur, District Bilaspur Chhattisgarh.
6. Arun Kumar Awasthi S/o Girish Kumar Awasthi, Aged About 58 Years R/o 27 Kholi, P. S. Civil Lines, Tehsil Bilaspur, Revenue And Civil District Bilaspur Chhattisgarh.

--- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For Respondents-State	:	Shri Suryakant Mishra, Dy. AG

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11/01/2018**

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has mainly sought for the following reliefs in Para 10 :

10.1 That this Hon'ble Court may kindly be pleased to issue a writ, order or direction commanding the respondent authorities, particularly Station House Officer City Kotwali, Bilaspur (respondent No.4) to register the F.I.R against respondents 5 & 6 as per Section 154 of Cr.P.C. and to follow the guidelines issued

by the Hon'ble Supreme Court in case of *Lalita Kumari Vs. Government of Uttar Pradesh & others*, in the interest of justice;

10.2 This Hon'ble Court may kindly be pleased to call for the records of the matter. As an alternative relief, the petitioner prays that the matter may kindly be referred to an independent investigation agency for investigating the entire matter.

2. As per the petitioner, respondents 5 & 6 have prepared forged will of her late husband by bequeathing the property in favour of respondent no.5 who is son of the petitioner and the alleged will did not contain the signature of husband of the petitioner and when the alleged will was prepared, her husband was bed ridden.
3. Learned counsel for the petitioner submits that despite the complaint made against respondents 5 & 6 to the concerned S.H.O., on 15.09.2017 & 07.12.2017 that the respondents 4 & 5 have prepared forged will, the FIR is not registered and the reports made vide annexures P-1 & P-2 are lying dormant at the end of respondents. He would further submit that the police may be directed to investigate the matter as cognizable offence has been stated to have been committed and the report thereof was made on 15.09.2017 & 07.12.2017.
4. The Supreme Court in ***Lalita Kumari Vs. Government of Uttar Pradesh and others {(2014) 2 SCC 1}*** has held as follows:-

“**120.** In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases

where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

5. Considering the above law laid down by the Supreme Court in ***Lalita Kumari (supra)***, the writ petition is disposed of with a direction to the concerned police to investigate the matter in accordance with law and submit the report before the competent criminal Court.

Sd/-

**GOUTAM BHADURI
JUDGE**