

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 58 of 2018**

1. Komaldas Ghritesh, S/o. Late Shri Jhawardas Ghritesh, Aged About 59 Years, Occupation - Service, Presently Working as Forest Range Officer, Bilaspur, R/o. Omnagar, Jarhabhata Bilaspur Chhattisgarh.
2. Ratan Singh Dadsena, S/o. Shri Chander Singh Dadsena, Aged About 61 Years, Occupation – Service, Working as Deputy Forest Range Officer, Rohansi Police Station Palari, District Baloda Bazar Bhatapara Chhattisgarh.
3. Satishchandra Sonkevra, S/o. Shri Ghanaram Sonkevra, Aged About 39 Years, Occupation Service, Working as Forest Guard Rohansi, District Baloda Bazar Bhatapara Chhattisgarh.
4. S.B. Dwivedi, S/o. Late Shri Ram Dhani Dhar Dubey, Aged About 63 Years, Occupation Retired as Sub Divisional Officer (Forest) R/o. 9/25, Green Park, Rajiv Gandhi Marg Bilaspur Chhattisgarh.
5. Sheosharan Dhar Badgaiyan (Wrongly Mentioned as Shivshankar Badgariyan in the Impugned Order) Aged About 54 Years, S/o. Late Shri Y.D. Badgaiyan, Occupation Service, Working as Deputy Conservator Of Forest (Protection Wing) Aranya Bhawan, Raipur, R/o. B -2/202 Karishma Society VIP Road Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. State Of Chhattisgarh, Through District Magistrate, District Baloda Bazar Bhatapara Chhattisgarh.
2. Superintendent Of Police, District Baloda Bazar Bhatapara, Chhattisgarh.
3. Station House Officer, Police Station Palari, District Baloda Bazar Bhatapara, Chhattisgarh.
4. Narayan Singh, S/o. Late Shri Dhoor Singh Chouhan, Aged About 71 Years, Caste Chouhan, Occupation Cultivation, R/o. Bodtara Police Station Bhatapara (Rural) District Baloda Bazar Bhatapara, Chhattisgarh.

---- Respondents

For Petitioners : Mr. R.S.Marhas with Mr. Suyash Dhar, Advocates

For Respondents-State : Mr. Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****05.02.2018**

Heard

1. The instant petition is against the order dated 15.01.2018 whereby on a complaint filed under Section 156(3) of Cr.P.C. by the respondent No.4, the

learned Chief Judicial Magistrate Baloda Bazar Bhatapara has directed to register an FIR and send a report after investigation.

2. Learned counsel for the petitioners would submit that the petitioners are the forest officers and allegations were made against them that while transporting the wood from Raipur to Palari different vehicles were engaged, however, two vehicles which were not at all existing, on the basis of the forged and fabricated bills, the payments were made. He submits that only on the vague allegations, the FIR is registered without any application of mind. He further submits that even the sanction under Section 197 of Cr.P.C. has not been obtained. He referred to ***Maksud Saiyed v. State of Gujarat & Ors.***¹ and would submit that the learned Court below without any application of mind has directed to register the FIR. He further referred to ***Lalita Kumari v. Government of Uttar Pradesh & Ors.***² wherein it is stated that even in cases of corruption, the preliminary enquiry has to be conducted, consequently the order of registering the FIR is bad and cannot be given effect to. He also referred to ***Anil Kumar & Ors. v. M.K.Aiyappa & Anr.***³ and submits that Magistrate cannot refer the matter under Section 156(3) of Cr.P.C. against the public servant without a valid sanction order and the application of mind by the Magistrate to order for investigation under Section 156(3) of Cr.P.C. should be reflected in the order.
3. Perused the complaint filed under Section 409, 420, 467, 468, 471 read with Section 34 of I.P.C. wherein certain allegations have been made that certain wood were being transported through the vehicle however two vehicles were not existing at all for which payments were made of Rs.4,68,201/- and the fact reflected that the said vehicles were not at all existing in the website of the Transport Department as Mini Bus & Tractor was shown which were not existing.

1 (2008) 5 SCC 668

2 (2014) 2 SCC 1

3 (2013) 10 SCC 705

4. Perusal of the order dated 15.01.2018 would show that the Court below in exercise of power under Section 156(3) of Cr.P.C. has directed for investigation and accepted the application under Section 156(3) of Cr.P.C. and in turn has directed to send the same to the Station House Officer, Palari and directed for registration of the FIR. Further Court has also directed to send the final report back to the Court.
5. As has been decided in ***H.D.F.C. Securities Ltd. & Ors. v. State of Maharashtra & Anr.***⁴, that the order under Section 156(3) of Cr.P.C. requiring investigation by the police cannot be said to have cause any injury of irreparable nature which requires quashing of the investigation. The order would show that the investigation has been ordered for. Further, in the law laid down in ***State of Telangana v. Habib Abdullah Jeelani & Ors.***⁵ their lordship of the Supreme Court has considered the principles laid down in ***Lalita Kumari***² and has held there can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself.
6. In this case, the nature of allegation at this stage cannot be stated *prima facie* that the act attributed was within the official duty by the respondent. It has to be investigated that if certain vehicles were not existing and the false vouchers have been made and amount has been paid on the basis of it. Certainly it cannot be stated to be within the official domain and duty of the officers; consequently, the issue requires investigation.
7. The Apex Court in ***State of Telangana***⁵ has further held that in the case like nature if the applicant or accused apprehend he can very well approach to the concerned Court of the jurisdiction for necessary anticipatory bail. It cannot be permitted in exercise of power under Section 482 of Cr.P.C. In

4 AIR 2017 SC 61

5 (2017) 2 SCC 779

view of the aforesaid fact and taking into the nature of order wherein only investigation has been ordered for, I am not inclined to admit this petition.

8. Accordingly, the petition is premature and is hereby dismissed.

Sd/-
Goutam Bhaduri
Judge

ashok