

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 69 of 2018

1. Dashrath S/o Late Manihar Satnami, Aged About 32 Years R/o Village Post Abhanpur, Tahsil Abhanpur, District Raipur (Chhattisgarh)
2. Smt. Rajo Bai, W/o Late Manihar Satnami, Aged About 50 Years R/o Village Post Abhanpur, Tahsil Abhanpur, District Raipur (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Secretary Department Of Home, Mantralaya, Mahanadi Bhawan, Raipur (Chhattisgarh)
2. Director General Of Police Chhattisgarh, Police Head Quarter, Raipur, District Raipur (Chhattisgarh),
3. Inspector General Of Police, Raipur (Chhattisgarh),
4. Superintendent Of Police, Raipur, (Chhattisgarh),
5. Station House Officer, Police Station Abhanpur, District Raipur (Chhattisgarh)
6. Mohammad Kalam, S/o Shri Mohamad Qayum, Aged About 40 Years R/o Nayapara, Sadar Bazar, Ward No. 39, Raipur, P.S. And Tahsil Raipur, District Raipur (Chhattisgarh),
7. Mohamad Javed, S/o Mohamad Ishmail, Aged About 38 Years R/o Sanjay Nagar, Raipur, Tahsil And District Raipur (Chhattisgarh),

-- Respondents

For petitioners – Smt. Renu Kochar, Advocate.
For State- Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

6/02/2018

Heard.

1. Learned counsel for the petitioners submits that some power was given to respondent No.6 Mohamad Kalam to manage affairs of the land, yet without any authority of law not being owner of the land, respondent No.6 has executed sale in favour of respondent No.7, thereby blatant fraud has been committed by respondent No.6 in connivance with the Sub Registrar as though alleged document is scribed as Ikrarnama but it speaks about the sale consideration, however power of sale was not given

in that and that too it is not registered. However, in connivance with the Sub Registrar sale has been executed and when report was made FIR is not registered.

2. The petitioners have prayed for the following relief in this petition:-

(i) That this Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus directing police authorities to register complaint and lodged FIR against respondent No.6 to 7.

(ii) That this Hon'ble Court may be further pleased to pass any other consequential and other orders/writs which this Hon'ble Court deems just and proper in the fact and circumstances of the case.

3. Perused the alleged Ikrarnama. Apparently it appears that it is not registered. Further perused the report Annexure P-5 made on 23/05/2016 wherein about forged sale has been projected.

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. Therefore, taking into such facts and also considering the above law laid down by the Supreme Court, the writ petition is disposed of with a direction to the concerned police to investigate the matter in accordance with law laid down by the Supreme Court in **Lalita Kumari** (supra) and proceed in accordance with law.

Sd/-

(Goutam Bhaduri)

JUDGE