

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 237 of 2018

Gyarasi Modi S/o Late Shri Satyanarayan Modi, Aged About 64 Years R/o Champa, Korba Road, District Janjgir Champa Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Superintendent Of Police, District Janjgir Champa Chhattisgarh.
3. Sub Divisional Officer (Police), Sakti, District Janjgir Champa Chhattisgarh.
4. Station House Officer, Police Station Sakti, District Janjgir Champa Chhattisgarh.
5. Pawan Modi S/o Late Shri Puranmal Modi, R/o Post Baradwar, Tehsil Sakti, District Janjgir Champa Chhattisgarh.

---- Respondents

For petitioner – Shri Sunil Otwani, Advocate.
For State- Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/04/2018

Heard.

1. Learned counsel for the petitioner submits that four persons have executed power of attorney in favour of respondent No.5 Pawan Modi and one of the person who delegated her power had already died on 1/02/1999 but ignoring the same respondent No.5 has executed sale deed in favour of his brother on 24/03/2006. After coming to know of the fact report was made to the S.P. Janjgir-Champa and to the SHO Police Station Sakti, District Janjgir-Champa which was received on 16/03/2018, however no cognizance has been taken.

2. Perused the document dated 10/03/2018 given to the SHO Police Station Sakti. Having regard to the same, prima facie it appears that cognizable offence has been said to have made out.

3. 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.”

4. 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

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