

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 416 of 2018**

1. Tulsiram S/o Shri Ganeshram Aged About 67 Years
2. Manki Bai W/o Shri Tulsiram Aged About 58 Years

Both the petitioners are R/o- Village- Barekel, P.S. And Tahsil- Pithora,
District- Mahasamund, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through- Secretary Department of Home Affairs (Police), Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh
2. Collector Mahasamund, District- Mahasamund, Chhattisgarh
3. Superintendent of Police Mahasamund, District- Mahasamund, Chhattisgarh
4. Station House Officer Police Station Pithora, District- Mahasamund, Chhattisgarh
5. Sub-Divisional Officer (Revenue) Pithora, District- Mahasamund, Chhattisgarh
6. Telsildar Pithora, District- Mahasamund, Chhattisgarh
7. Laxmi Narayan Agrawal @ Funnu S/o Late Shri Jagannath Agrawal Aged About 62 Years R/o- Pithora, P.S. And Tehsil- Pithora, District- Mahasamund, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Sudeep Agrawal, Advocate
For Respondents/State	:	Shri Ashish Shukla, Dy. AG for the State.
For Respondent No.7	:	Shri Surfraj Khan, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****26/07/2018**

1. Heard.
2. Learned counsel for the petitioners submits that some of the revenue

authorities have forcefully entered into the house of the petitioners at the behest of respondent No.5 that the petitioners are the holders of the Benami property. It is pleaded that the Benami Transactions (Prohibition) Act, 2016 do not empower any revenue authority to take steps of forcefully entering into the house, therefore, the cognizable offence has been committed for which a report was made to the Collector and the Sub-Divisional Officer (R).

3. The petitioner has prayed the following reliefs:-

“**10.1** That, this Hon'ble Court may kindly be pleased to issue a writ (S), order (S), direction (S) by directing the respondent authorities, particularly Station House Officer Pithora (Respondent No.4) to register the F.I.R. against the offenders (as mentioned in the complaint, Annexure P-1 & P-2), as per Section 154 of Cr.P.C. and the guidelines issued by the Hon'ble Supreme Court of India in the case of Lalita Kumari Vs. Government of Uttar Pradesh & Others, in the interest of justice.

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

10.3 Any other relief (s) in form of order or orders and/or direction (s) as your lordships may deem fit and proper.”

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 nature of allegations as contained in Annexure P-1 & P-2, since it is pleaded that the petitioners are the senior citizens and the FIR is not being accepted, the liberty is given to the petitioners to send the report Annexure P-1 & P-2 by a registered post to the concerned police station and the police station on receipt of the same shall register the FIR and shall investigate the matter in accordance with law. It is further made clear that this Court has not expressed any opinion on the merits of the case.
6. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu