

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 518 of 2018

Dr. Santosh Modi, S/o Late Matadin Modi, Aged About 44 Years R/o M.D. Modi Memorial Hospital, Vivekanand Marg Janjgir, Ps Janjgir, District Janjgir Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Home Affairs, Ministry, Mahanadi Bhawan, Naya Raipur, PO And PS Rakhi, District Raipur Chhattisgarh
2. The Superintendent Of Police, Janjgir, District Janjgir Champa Chhattisgarh
3. Station House Officer, Janjgir, Police Station Janjgir, District Janjgir Champa Chhattisgarh
4. C.S. Netam, Working As Sub-Inspector, PS Janjgir, District Janjgir Champa Chhattisgarh
5. Bajrang Lathiya, S/o Late Shanti Lal Lathiya, R/o Village Bodena, PS Janjgir, District Janjgir Champa Chhattisgarh
6. Jagjeevan Lathiya S/o Late Shanti Lal Lathiya, R/o Village Bodena, PS Janjgir, District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Shri Sumit Singh, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/09/2018

Heard.

This petition has been filed by the petitioner seeking direction to respondent No.3 to lodge FIR and file charge sheet under Section 458 CrPC as also Section 3 and 4 of the Chhattisgarh Medicare Service Persons and Medicare Service Institutions (Prevention of Violence & Damage or Loss to Property) Act, 2010 (for short "the Act of 2010") against respondents 5 and 6. The petitioner has also prayed for a direction to the State to appoint an independent investigating agency for investigation of Crime No.511/2018 registered at police station – Janjgir, District –

Janjgir-Champa.

2. The pleadings of the petitioner are that after an incident, where the patient was brought to petitioner's hospital, referred to higher institution but the patient, during transit died, leading to alleged act of assault in the nursing home, report was lodged but the police has registered offence only under Section 294, 506, 323 read with Section 34 of IPC whereas the police ought to have also registered offence under Section 458 IPC against respondents 5 and 6 as also under Section 3 and 4 of the Act of 2010.

It is also averred in the petition that later on, respondents 5 and 6 have also held out threat of life on mobile call, in respect of which also a report has been lodged in the police station on 24/08/2018, but till date, no offence has been registered.

3. It appears that the petitioner's report in respect of the incident which is alleged to have taken place earlier on 20/08/2018, police has only registered crime for offences under Section 294, 506, 323 read with Section 34 of IPC. The matter is still under investigation. The petitioner has made certain allegations against officer in-charge of the police station, who is holding investigation into the matter.

4. As the investigation is going on, the petitioner may bring to the notice of the investigating officer all the material available with him in support of the allegations that a *prima facie* case of registration of offence under Section 458 IPC is made out. If no further material is submitted, on the basis of material already submitted by the petitioner to the investigating officer, the same shall be taken into consideration.

If the police does not register offence under Section 458 of IPC against the alleged criminals at the time of filing of charge sheet, it would be open for the petitioner to submit a complaint before the Magistrate and seek registration of offence under Section 458 of IPC also. In so far as the allegation of threat is concerned, respondent No.3 is under an obligation to hold enquiry and take necessary steps in that regard and if offence is not registered, the petitioner may approach the police authorities with necessary details and even thereafter, no action is taken, the petitioner may file complaint before the jurisdictional magistrate.

5. With the aforesaid observation, this petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge