

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 11.7.2019****Order delivered on 02.8.2019****CRR No. 24 of 2016**

- Manish Jain S/o Late Madanchandra Jain Aged About 41 Years R/o Kailash Nagar, P.S. City Kotwali Rajnandgaon, Civil And Rev. District Rajnandgaon Chhattisgarh. , Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through District Magistrate Rajnandgaon, Civil And Rev. Distt. Rajnandgaon Chhattisgarh. , Chhattisgarh
2. Presha Jain W/o Manish Jain Aged About 36 Years
3. Lalit Chouradiya S/o Bhairudan Chouradiya Aged About 60 Years
4. Smt. Nirmala Chouradia W/o Lalit Chouradiya Aged About 55 Years
5. Prashant Chouradiya S/o Lalit Chouradiya Aged About 34 Years
6. Ku. Namrata D/o Lalit Chouradiya Aged About 30 Years

No. 2 to 6 are R/o New Sarafa Bazar Ward No. 6 Balaghat, P.S. And Tah. Balaghat, Civil And Rev. Distt. Balaghat M.P. District : Balaghat, Madhya Pradesh

----Respondents

For Revisioner/Applicant	: Shri Rakesh Thakur, Advocate
For Respondent 1/State	: Shri Anant Bajpai, Panel Lawyer
For Respondents 2 to 6	: Shri Manoj Paranjape, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order****02/08/2019**

1. Heard on admission.
2. The present revision arises out of the impugned order dated 16.10.2015 passed by the Sessions Judge, Rajnandgaon (CG) in Cr. Revision No.82/2014 whereby the Sessions Judge has set aside the order dated 12.9.2014 passed by the Judicial Magistrate First Class,

Khairagarh at Rajnandgaon in Cr. Complaint Case No.810/2014 in which the court below has ordered to register a complaint case against respondents 2 to 6 under Sections 418, 420, 468, 471, 34 of the I.P.C.

3. Brief facts of the case are that a complaint case was filed before the Judicial Magistrate First Class, Khairagarh by Manoj Jain (deceased) brother of Manish Jain. In the complaint it was stated that Manish Jain has married to Nidhi alias Presha Jain on 25.1.1998. Presha Jain went with her parents on 4.11.2013 on account of dispute between her and the petitioner. After marriage she lived peacefully with her in-laws, but after 16 years of the marriage, she went to her parents and pressurizing her in-laws to give share in the property of petitioner's brother Manoj Jain. She also threatened them to falsely implicate, if her demand is not fulfilled. But the petitioner and his brother did not get influenced with the pressure of Presha Jain. Therefore, she lodged a complaint case against the petitioner and his family members for demand of dowry and submitted a list of demand of dowry with signature of one Uttam Chopra. The petitioner has examined the signature of Uttam Chopra by handwriting expert. The handwriting expert gave its report that the signature of Uttam Chopda is false and fabricated. Thereafter, Manoj Jain filed a complaint against respondents 2 to 6. The learned Magistrate directed the police to enquire into the matter and file report. After investigation, police filed its report before the trial court on 24.8.2014 stating that the demand of dowry is false and the

signature of Uttam Chopra is fabricated, based on which, the trial court has ordered to register a complaint case against respondents 2 to 6 on 12.9.2014. Against the said order respondents 2 to 6 filed a criminal revision before the Sessions Judge, Rajnandgaon and the Sessions Judge, Rajnandgaon set aside the order dated 12.9.2014. (During trial, Manoj Jain has died, therefore, his legal representative, Manish Jain (husband of respondent No.1) is taken on record). Hence, this revision.

4. Learned counsel for the applicant submitted that the learned Sessions Judge has passed the impugned order without properly appreciating the documents and evidence available on record and the Sessions Judge has wrongly discharged respondents 2 to 6 from the charges framed against them. He placed reliance on **Fayyaz Ahmad Vs. State of M.P.**, reported in **2014 Law Suit (MP) 2376**.

5. On the other hand learned counsel for the State and learned counsel for respondents 2 to 6 supported the order and submitted that there is no irregularity or infirmity in the order passed by the Sessions Court.

6. Learned counsel for respondents 2 to 6 submitted that ingredients of offence under Sections 418, 420, 468, 471, 34 of the I.P.C. are not attracted. He placed reliance on **Satya Narayan Mohapatra Vs. State of Orissa and another**, reported in **2004 CRI.L.J. 742**, **Punjab National Bank and Ors. Vs. Surendra Prasad Sinha**, reported in **AIR 1992 SC 1815**, **Pepsi Foods Vs. Spl. Judicial Magistrate**, reported in **(1998 (1) MPLJ) 494**, **Prem Pandhi Vs.**

Mahesh Garg, reported in **1980 J LJ 45**, **Om. Kr. Dhankar Vs. State of Haryana**, reported in **2012 (II) MPWN 51**, and **Narendra Kumar Srivastava Vs. State of Bihar and Ors.** reported in **(2019) 3 SCC 318**.

7. I have learned counsel for the parties and perused the record.

8. On perusal of the complaint and statements of the witnesses, it is clear that the main allegations of the petitioner is that a forged list of demand of dowry was prepared by the respondents and it was presented before the Family Court, Balaghat. In **Narendra Kumar Srivastava** (supra) Hon'ble the Supreme Court has held as under :

“23. In *Sachida Nand Singh (Sachida Nand Singh V. State of Bihar, (1998) 2 SCC 493: 1998 SCC (Cri) 660*), this Court had dealt with Section 195(1)(b)(ii) CrPC unlike the present case which is covered by the preceding clause of the section. The category of offences which fall under Section 195(1)(b)(i) CrPC refer to the offence of giving false evidence and offences against public justice which is distinctly different from those offences under Section 195(1)(b)(ii) CrPC, where a dispute could arise whether the offence of forging a document was committed outside the court or when it was in the custody of the court. Hence, this decision has no application to the facts of the present case.

24. The case in hand squarely falls within the category of cases falling under Section 195(1)(b)(i) CrPC as the offence is punishable under Section 193 IPC. Therefore, the Magistrate has erred in taking cognizance of the offence on the basis of a private complaint. The High Court, in our view, has rightly set aside the order of the Magistrate. However, having regard to the facts and circumstances of the case, we deem it proper to set aside the costs imposed by the High Court.”

9. In the order dated 16.10.2015, the learned Sessions Judge has held that the order passed by the Magistrate is not a speaking order and it has not been mentioned as to how Sections 418, 420, 468, 471, 34 of the I.P.C. are attracted against the respondents and there is no evidence on record. It is also held that it is a matter of dispute between the husband and wife and they have not taken appropriate steps to solve the matter and it is pending before the Family Court. A list of forged demand of dowry was submitted by the respondents, which on examination by the handwriting expert was found forged. The Sessions Judge has also relied on **Pepsi Foods Vs. Spl. Judicial Magistrate, (1998 (1) MPLJ) 495** which reads as under :

“ Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

10. Considering the facts and circumstances of the case, I am of the view that there is no irregularity or infirmity in the order passed by the

Sessions Judge whereby, the order passed by the learned Magistrate has been set aside discharging the respondents of the above charges.

11. The revisions has no merits. Accordingly, it is dismissed at the motion stage itself.

Sd/

(Rajani Dubey)

JUDGE

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