

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 312 of 2016

Order Reserved on : 18/07/2019

Order Delivered on : 29/08/2019

- Rajkumar Mishra S/o Late Ganesh Prasad Mishra Aged About 46 Years R/o Haldibadi, Chirmiri, Thana-Chirmiri, Tah.-Khadgavan, District-Koriya Chhattisgarh, E- Mail- Rtichrm@Gmail.Com, M.O. No. 9406363699, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through- Thana Prabhari, Chirmiri, District-Koriya Chhattisgarh, Chhattisgarh
2. Supritendent Of Police, Baikunthpur, District-Koriya Chhattisgarh.

---- Respondent

For Applicant	:	Petitioner in person.
For Respondent/State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

29/08/2019

1. Petition has been brought praying for issuance of appropriate writ.
2. It is submitted that one FIR has been registered in police-station Chirmiri, within the jurisdiction of respondent No.2, as Crime No.319/2013 for the offences under Section 409/34 of IPC. The case has been investigated completely and one correspondence has been made by respondent No.2 with the Department of Law & Legislative Affairs for grant of sanction to prosecute accused persons in that case, who are public servants. Correspondence was made on 10.7.2015 and thereafter more than one year has passed, but till date respondent

No.1 has not made any response to the said correspondence made by respondent No.2, therefore, relying on the judgment rendered in the matter of Vineet Narain & others vs Union of India & Ors. and also of the the judgment of Supreme Court dated 6.8.2014 passed in WPC No.305/2007, parties being Manzoor Ali Khan vs Union of India & Ors., it is prayed that this Court be pleased to pass order directing the authority concerned to grant sanction for prosecution within a time limit, as fixed by this Court, and if the sanction is not granted within said time limit then direction be given to file charge sheet.

3. Learned State counsel opposes the submissions made by the petitioner in person and submits, that on 11.9.2012 the petitioner had filed an application under Section 156(3) of CrPC on the basis of which the learned trial Court passed order dated 12.7.2013 directing investigation of the case and on the basis of which FIR under Crime No.319/2013 was registered by Police Station Chirmiri. One of the accused in the said FIR namely Dambru Bahra challenged the order of the trial Court by filing CrMP No.722/2013. Said petition of Dambru Bahra was allowed by this Court vide order dated 12.7.2013 and the order of trial Court was set aside. However, this Court directed the trial Court to proceed with the complaint under the provisions of Sections 202, 203 and 204 of CrPC and since then the case is pending before the trial Court as a complaint case, therefore, the case that has been investigated as Crime No.319/2013 cannot be prosecuted. Hence, the petition brought is misconceived.
4. The petitioner has filed rejoinder to the reply filed by the respondents in which he has not made a mention of CrMP No.722/2013 and the order dated 12.7.2013 by this Court.

5. After considering on the submissions made by petitioner in person and the State counsel, it is found that the order dated 12.7.2013, on the basis of which FIR is registered vide Crime no.319/2013 and investigated, is no longer in existence subsequent to the order passed by this Court on 21.10.2013 in CrMP No.722/2013, in which the trial Court has been clearly directed to continue with application filed by the petitioner under the provisions for complaint case and the same appears to be pending for inquiry. Therefore, when the order for lodging of FIR itself is non-existent, FIR and investigation on the basis of said order cannot be said to be in existence. The only thing which is existing is the complaint case filed by the petitioner, therefore, I find that this petition is without any substance and misconceived, hence, it is dismissed. However, the petitioner is at liberty to pursue the complaint case filed by him before the trial Court.

Sd/-

(Rajendra Chandra Singh Samant)

Judge