

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on: 28-6-2019Judgment delivered on: 15-7-2019Writ Appeal No.99 of 2018*{Arising out of order dated 11-8-2017 passed by the learned Single Judge
in Writ Petition (Cr.) No.292/2016}*

Mahesh Kumar Agrawal, S/o Brij Mohan Agrawal, aged about 42
years, Posted as President, Nagar Panchayat, Municipal Council
Tilda, Newra, Raipur, District Raipur (C.G.)

(Res. No.5)
---- Appellant

Versus

1. State of Chhattisgarh, through the Secretary, Home Department,
Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Inspector General of Police, Raipur, District Raipur (C.G.)
3. Superintendent of Police, Raipur, District Raipur (C.G.)
4. Station House Officer, Police Station Tilda Neora, District Raipur
(C.G.)
5. Hemshankar Deshlahara, S/o Late D. Deshlahara, aged about 54
years, Posted as Ex.-Chief Municipal Officer, Municipal Council
Tilda, Newra, Raipur, District Raipur (C.G.)
7. Laxmi Narayan Verma, Vice President, Nagar Panchayat Municipal
Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
8. Vijay Sonu Markanday, Councillor, Nagar Panchayat Municipal
Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
9. Manohar Gahani, Councillor, Nagar Panchayat Municipal Council
Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
10. Surajnarayan Sharma, Councillor, Nagar Panchayat Municipal
Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)

---- Respondents

ANDWrit Appeal No.167 of 2018*{Arising out of order dated 11-8-2017 passed by the learned Single Judge
in Writ Petition (Cr.) No.292/2016}*

1. Laxmi Narayan Verma, S/o Shri Ramswaroop Verma, aged about 37 years, Vice President, Nagar Panchayat Municipal Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
2. Vijay Sonu Markanday, S/o Shri Ubaran Das, aged about 33 years, Councillor, Nagar Panchayat Municipal Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
3. Manohar Gahani, S/o Shri Ramamal Gahani, aged about 49 years, Councillor, Nagar Panchayat Municipal Council Tilda, Newra, Tahsil Tilda, District Raipur (C.G.)
4. Surajnarayan Sharma, S/o Late Hari Prasad Sharma, aged about 50 years.
5. Nilimp Agrawal, S/o Late Santosh Agrawal, aged about 31 years.
6. Ramesh Tiwari, S/o Late Premnath Tiwari, aged about 43 years.
7. Ramesh Kumar Agrawal, S/o Late Balkishan Agrawal, aged about 42 years.
8. Devendra Agrawal, S/o Shri S.L. Agrawal, aged about 52 years.
9. Inder Kotwani, S/o Late Gopichand Kotwani, aged about 55 years.
10. Bhagchand Chhabdiya, S/o Late Ramchand Chhabadiya, aged about 55 years.
11. Ravi Sen, S/o Prabha Shanker Sen, aged about 29 years.
12. Nikhil Jain, S/o Shri Narendra Jain, aged about 30 years.
13. Purushottam Agrawal, S/o Late Shyam Sunder Agrawal, aged about 45 years.
14. Deepak Sharma, S/o Late Raj Kumar Sharma, aged about 33 years.
15. Raju Yadav, S/o Shri Shyamu Yadav, aged about 38 years.

No.4 to 15 are residents of Village Tilda-Newra, Tahsil Tilda, District Raipur (C.G.)

---- Appellants

Versus

1. State of Chhattisgarh, through the Secretary, Home Department, Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
2. Inspector General of Police, Raipur, District Raipur (C.G.)
3. Superintendent of Police, Raipur, District Raipur (C.G.)

4. Station House Officer, Police Station Tilda Neora, District Raipur (C.G.)
5. Hemshankar Deshlahara, S/o Late D. Deshlahara, aged about 54 years, Posted as Ex-Chief Municipal Officer, Municipal Council Tilda, Newra, Raipur, District Raipur (C.G.)

---- Respondents

For Appellants: Mr. B.P. Sharma and Mr. Hari Agrawal, Advocates.
 For Respondents No.1 to 4 / State: -
 Mr. Siddharth Dubey, Deputy Govt. Advocate.
 For Respondent No.5: Mr. Anup Majumdar, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, CJ and
Hon'ble Shri Sanjay K. Agrawal, J.

C.A.V. Judgment

Sanjay K. Agrawal, J

1. Both the writ appeals involve common question of law and fact, therefore they were heard together and are being disposed of by this common judgment.
2. The above-stated two writ appeals have been preferred under sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, calling in question the order dated 11-8-2017, by which the learned Single Judge has directed respondents No.1 to 4 / State to consider the allegations made by the writ petitioner in the FIR lodged by him and the statement recorded of him under Section 161 of the CrPC and to come to a conclusion with respect to whether the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act of 1989') is made out or not against the writ appellants.
3. The complainant / respondent No.5 herein filed a first information report against all the writ appellants stating inter alia that he is the Chief Municipal Officer of Municipal Council, Tilda-Neora and on the

relevant date i.e. on 19-7-2016, the appellants herein who are President and Councillors of the said Municipal Council and their supporters came to his office and tried to create undue pressure upon him to act in a particular way and pressurised him to perform illegal acts by misusing the office which the writ petitioner being the law abiding officer declined as a result of which, on that day, they threatened, abused and assaulted the writ petitioner very badly on which report was lodged by the writ petitioner against the appellants herein pursuant to which offence under Sections 294, 323 and 506 read with Section 34 of the IPC was registered against them and thereafter, charge under Sections 186, 332, 353, 427 and 342 of the IPC was also added against them.

4. Respondent No.5 herein filed a writ petition before this Court bearing W.P.(Cr.)No.292/2016 stating inter alia that respondents No.1 to 4 / State be directed to investigate the matter and arrest the private respondents for the offences they have committed pursuant to the FIR dated 19-7-2016, as they have failed to perform their duty. The aforesaid writ petition came up for hearing before this Court on 11-8-2017. On that day, the learned Single Judge after hearing learned counsel for the petitioner and learned State Counsel, directed the State and its authorities to consider on the allegations made in the FIR filed by the complainant and the statement recorded of him and to come to a conclusion with respect to the commission of offence by the appellants herein keeping in view the provisions contained in Section 4 of the Act of 1989.
5. Feeling aggrieved and dissatisfied with the order dated 11-8-2017 passed in W.P.(Cr.)No.292/2016, Mahesh Kumar Agrawal being the

President of Municipal Council, Tilda-Neora has filed W.A. No.99/2018 and other appellants have filed W.A.No.167/2018 stating inter alia mainly that Section 4 of the Act of 1989 has no application to the facts of the present case and the appellants herein were not noticed before passing the impugned order and the order passed by the learned Single Judge being contrary to law, deserves to be set aside.

6. In the writ appeals the State has filed return as the writ petition was disposed of at admission stage and no return was filed in the writ petition by the State. In the return, it has been stated that on the basis of FIR lodged by the complainant, offence under Sections 294, 323, 506 read with Section 34, 186, 332, 353, 427 and 342 of the IPC have been registered under FIR No.205. Likewise, on the report of one Vijay Markandey, offence has also been registered against the complainant / respondent No.5 herein, punishable under Sections 294, 323 and 506 of the IPC under FIR No.206.
7. Mr. B.P. Sharma, learned counsel appearing for the appellants, would submit that the impugned order has been passed by the learned Single Judge in violation of the principles of natural justice, as though the appellants were arrayed as party respondents in the writ petition i.e. W.P.(Cr.)No.292/2016, but they were never noticed in the writ petition by the learned Single Judge and direction has been issued against the appellants herein beyond their back to consider the allegations made in the FIR and the statement under Section 161 of the CrPC with respect to the alleged offence keeping in view Section 4 of the Act of 1989 which deserves to be set aside. He would also submit that even if the offence under Section 3(1)(x)

of the Act of 1989 has not been registered, remedy of the writ petitioner / complainant is to file application under Section 156(3) of the CrPC or to avail the remedy under Section 190 or 200 of the CrPC and no direction can be given in the writ petition filed by the complainant to consider and investigate the offence under the Act of 1989.

8. Mr. Siddharth Dubey, learned Deputy Govt. Advocate appearing for the State/respondents No.1 to 4, would submit that the learned Single Judge has only directed to look into the veracity of the allegations made in the complaint which was lodged by the complainant / respondent No.5 herein against the appellants herein. He would further submit that on the complaint of the complainant, offence has been registered against the appellants herein being the subject matter of FIR Nos.205/2016 and 206/2016 at the instance of respondent No.5 herein and Vijay Markandey, respectively.
9. Mr. Anup Majumdar, learned counsel appearing for the complainant / writ petitioner, would submit that the learned Single Judge is absolutely justified in directing for investigation qua the consideration, as despite reporting the commission of offence under Section 3(1)(x) of the Act of 1989, neither FIR has been registered nor proper investigation is being carried out by the prosecution / respondents No.1 to 4, therefore, no exception can be taken to the direction given by the learned Single Judge and the writ appeals deserve to be dismissed.
10. We have heard learned counsel for the parties, considered their rival submissions and went through the record with utmost circumspection.

11. It is not in dispute that pursuant to the FIR lodged by the complainant / writ petitioner, offence under Sections 294, 323 and 506 read with Section 34 of the IPC and other allied offences have been registered against the appellants herein and is pending investigation and the report of which is the subject matter of FIR No.205/2016. One of the Councillors of Municipal Council, Tilda-Neora namely Vijay Markandey has also got registered offence under Sections 294, 323 and 506 of the IPC against the writ petitioner which is the subject matter of FIR No.206/2016. During the course of pendency of investigation, the complainant – Hemshankar Deshlahara filed a writ petition before this Court seeking various reliefs including arrest of the appellants herein in which the learned Single Judge has passed direction to respondents No.1 to 4 / State to the following effect: -

“6. Respondents No.1 to 4 are directed to consider on the allegations made by the petitioner in the FIR lodged by him and the statement recorded of him under Section 161 Cr.P.C. and come to a conclusion with respect to alleged offence whether it is made out or not also keeping in view Section 4 of the Act, 1989, which provides that a public servant who not being a member of Scheduled Castes and Scheduled Tribes willfully neglects his duty required to be performed by him under this Act shall be a punishable offence.”

12. A careful perusal of the aforesaid direction of the learned Single Judge would show that taking cognizance of the grievance raised by the writ petitioner / complainant that the offence under Section 3(1)(x) of the Act of 1989 is not being registered, the learned Single Judge has directed to consider the contents of the FIR lodged by the original writ petitioner and his statement recorded under Section 161 of the CrPC and to come to a conclusion that whether offence under Section 3(1)(x) of the Act of 1989 is made out or not, also

keeping in view the provisions contained in Section 4 of the Act of 1989.

13. Chapter XIV of the CrPC deals with “Conditions Requisite for initiation of Proceedings”. Section 190 of the CrPC deals with cognizance of offences by Magistrates and it provides that Magistrates may take cognizance of any offence. The provisions of Chapter XII of the CrPC show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provisions of the CrPC. Thus, the manner and the method of conducting investigation are left entirely to the officer-in-charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the investigation. The formation of opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 of the CrPC is to be that of the officer-in-charge of the police station.
14. It is well settled law that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the CrPC. The power to investigate must be exercised strictly on the condition of which that power is granted by the CrPC itself.
15. There is a long line of cases demarcating the functions of police in the field of crime detection holding that the investigation should not

be interfered with, as it is the province of the executive. The first decision in this point is Emperor v. Khwaja Nazir Ahmad¹ in which it has been held so: -

“... In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491 CrPC, to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. ...”

16. Similar is the proposition laid down by the Supreme Court in the matters of H.N. Rishbud and Inder Singh v. The State of Delhi², State of West Bengal v. S.N. Basak³, S.N. Sharma v. Bipen Kumar Tiwari and others⁴ and State of West Bengal v. Swapan Kumar Guha and others⁵.

17. The Supreme Court in the matter of Divine Retreat Centre v. State of Kerala and others⁶ has considered the entire decisions on the point right from Khwaja Nazir Ahmad's case (supra) up to Nirmaljit Singh Hoon v. State of W.B.⁷ and observed as under holding that the High Court in exercise of its inherent jurisdiction should not interfere with the investigation: -

1 AIR 1945 PC 18

2 AIR 1955 SC 196

3 AIR 1963 SC 447

4 AIR 1970 SC 786

5 AIR 1982 SC 949

6 (2008) 3 SCC 542

7 (1973) 3 SCC 753

“39. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.”

18. The Supreme Court in the matter of **State of Punjab v. Davinder**

Pal Singh Bhullar and others⁸ has clearly held that the High

Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an investigating officer mala fide or the matter is not investigated at all. Even in such a case, the High Court cannot direct the police as to how the investigation is to be conducted but can insist only for the observance of process as provided for in CrPC. Another remedy available to such an aggrieved person may be to file a complaint under Section 200 CrPC and the court concerned will proceed as provided in Chapter XV CrPC.

19. In the matter of **Popular Muthiah v. State**⁹, explaining the scope of

Section 482 of the CrPC, Their Lordships of the Supreme Court have held that the High Court cannot issue directions to investigate the case from a particular angle or by a particular agency.

20. In the matter of **Manohar Lal Sharma v. Principal Secretary and**

8 (2011) 14 SCC 770

9 (2006) 7 SCC 296

others¹⁰, the Supreme Court has held that once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms.

21. Reverting to the facts of the present case in light of the principles of law laid down in the afore-cited judgments by Their Lordships of the Supreme Court, it is quite vivid that during the pendency of investigation for the offences registered at the instance of the complainant and the accused persons who are parties herein, the complainant / writ petitioner filed writ petition before this Court stating that the FIR for offence punishable under Section 3(1)(x) of the Act of 1989 is not being registered against the present appellants. The writ court has stepped in and has directed only to consider the allegations made by the writ petitioner in the FIR filed by him and his statement recorded under Section 161 of the CrPC and come to a conclusion with respect to the alleged offence under the Act of 1989, meaning thereby, the writ court has thereby restricted the investigation only to consider the FIR lodged by the complainant and the statement under Section 161 of the CrPC and

10 (2014) 2 SCC 532

come to a conclusion whether the offence is made out under the Act of 1989 or not. It would further mean that the writ court has directed the investigating officer only to consider the investigation from a particular angle by only analysing the FIR lodged and the statement recorded under Section 161 of the CrPC, and all other material has been directed to be left and not to be considered while considering the alleged commission of offence against the appellants herein. This is clearly a case where it would amount to contravening the statutory provisions laying down the procedure of investigation. Their Lordships in **Popular Muthiah** (supra) have clearly held that this court / High Court cannot issue directions to investigate the case from a particular angle. The instant direction by the learned Single Judge directing only to consider the FIR and the statement recorded under Section 161 of the CrPC and come to a conclusion that too during the currency of investigation which is being undertaken by the investigating officer as both the parties have lodged counter FIR against each other, in our considered opinion, would amount to contravening the statutory provisions and the well settled law laid down by Their Lordships right from **Khwaja Nazir Ahmad's** case (supra) to **Manohar Lal Sharma** (supra), as the writ court cannot arrogate itself to the place of investigating officer and direct to investigate the offence from a particular angle. According to us, this direction in the midst of investigation by the State police that too to undertake the investigation from a particular angle and further to take only the FIR and the statement recorded under Section 161 of the CrPC and to come to a conclusion about the commission of offence under the Act of 1989, is nothing but an

unwarranted intervention to the statutory right of the police officer to investigate the cognizable offence. In our considered opinion, such a direction by the learned Single Judge is not in accordance with law and is unwarranted in law. We are unable to concur with the view so expressed by the learned Single Judge.

22. Concludingly, the impugned order passed by the learned Single Judge deserves to be and is accordingly set aside and the writ petition stands dismissed. However, liberty is reserved in favour of respondent No.1 / investigating officer to proceed further and to investigate the offences strictly in accordance with law complying with the provisions under the CrPC without being influenced by any of the observations made herein-above which have been made only for the purpose of judging the correctness of the order passed by the learned Single Judge in the writ petition and nothing more.

23. The writ appeals are allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Appeal No.99 of 2018

Petitioners

Mahesh Kumar Agrawal

Versus

Respondents

State of Chhattisgarh and others

(English)

Power to investigate criminal offence lies exclusively with the Executive.

(हिन्दी)

दाण्डिक अपराध के अन्वेषण की शक्ति अनन्य रूप से कार्यपालिका में निहित होती है।