

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1069 of 2018****Order reserved on - 26.07.2019****Order delivered on - 24.10.2019**

- Ratnesh Jaiswal aged about 48 years (at present 49 years) S/o Late Ramesh Kumar R/o- Vashundhara Nagar, Ring Road No. 2, P.S. Civil Lines Bilaspur, District- Bilaspur, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Shivkumari aged about 40 years W/o Manharan Lal Gond R/o- Behind Naturecity, Sakri Police Station Chakarbhata Chauki Sakari, Tahsil Takhatpur District- Bilaspur, Chhattisgarh.
2. Smt. Laxmibai Aged About 30 Years W/o Ramphal Gond R/o- Behind Naturecity, Sakri Police Station Chakarbhata Chauki Sakari, Tahsil Takhatpur District- Bilaspur, Chhattisgarh.
3. Smt. Kathabai Aged About 28 Years W/o Ajay Gond R/o- Behind Naturecity, Sakri Police Station Chakarbhata Chauki Sakari, Tahsil Takhatpur District- Bilaspur, Chhattisgarh.
4. Manharanlal Aged About 49 Years S/o Late Anandram Gond R/o- Behind Naturecity, Sakri Police Station Chakarbhata Chauki Sakari, Tahsil Takhatpur District- Bilaspur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Shashank Thakur, Adv.
For Respondents	:	Mr. Akhilesh Kumar, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****24.10.2019**

1. This is a revision petition filed by the applicant against the order dated 12.04.2017 passed by the Special Judge SC/ST (Prevention of Atrocities Act 1989) Bilaspur, in Special Case No. 15/2017.

2. Brief facts of the case are that respondents No.1 to 4 filed a complaint under Section 200 of the Cr. P.C. before the Special Judge Atrocity Bilaspur on 29.09.2016 on the ground that the complainant belongs to Scheduled Tribes and they are the co-owner of the disputed land. Applicant and his companions used to come again and again to

the land of the respondents herein and told that they have purchased the land and tried to take possession over the land. On 03.05.2016, the applicant and his companions came to the spot and destructed the temporary boundary created by the complainant. On around 4 PM, they started labeling the ground. When the complainant and their colleague tried to intervene and stopped them, the accused persons assaulted them and hurled abuses using filthy language. Earlier also, similar attempt was made and report lodged to police but no action was taken. A report was given to S.P. Bilaspur when Chowki Sakari did not accept the report of the complainants. When no action was being taken, the complainant filed a complaint case against applicant and other co-accused persons under Section 3 (1,3,4,5,8,10) of Atrocities Act and Sections 294, 323, 325, 327, 354, 506-B and 34 of IPC. After recording the statements of witnesses, the trial Court registered the offence against the applicant and three other persons on 12.04.2017. Hence, this revision.

3. Learned counsel for the applicant submits that the order dated 12.04.2017 is totally illegal and arbitrary. From the pleading of complainant, no offence under Section 394, 323 506-B of IPC and Section 3(1) (R) and 3(1)(S) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out against the applicant. He further submits that against this incident, applicant has lodged FIR at Police Station Chakarbhata, on 16.05.2016 for the offence under Section 147, 148, 149, 294, 323, 325, 327 & 506 of IPC. In that complaint, the applicant had named total 8 accused namely Manharan, Santram, Ajay Uikey, Shiv Kumar, Durpat, Shiv Kumari, Jan Bai, Laxmi and Kela Bai. The applicant filed FIR on 16.05.2016 and the present complaint was filed before the Court below on 29.09.2016, which itself, shows that the complaint is concocted. He also submitted that the allegation as levelled in the complaint, prim- facie shows that the same is a reaction because petitioner had lodged a report against the complainant. If the incident has taken place on 03.05.2016, why the report was not lodged in time and if the police was not taking action, why the complaint under Section 200 Cr.P.C. was filed in time. He also

submits that the learned trial Court without application of mind has registered the offence against the petitioner, which is improper order. The charge-sheet against Shiv Kumar and other who are respondents was filed on 03.09.2016, whereas the complaint against present petitioner has been filed as late as on 29.09.2016. Thus, it is clear that when the respondent party realized that charge-sheet has been filed against them, then as a matter of revenge, they also filed a complaint under Section 200 of Cr.P.C against the applicant and others. It is next contended that the applicant had never met or seen the complainant before 03.05.2016, so, there was no occasion to know that they belonged to scheduled caste or scheduled tribes and false allegations has been made against the applicant to harass him. If the proceedings of the trial Court are ordered to be continued, then the same will result in abuse of process of law. Hence, the present petition deserves to be allowed.

4. Learned counsel for the respondents supported the impugned order and submitted that respondents belong to Scheduled Tribes community and are very poor persons. Applicant and his companion comes with JCB Machine and forced them to vacate the disputed land. They have purchased this land the applicant is a builder and he belongs to land and residential colony. On 03.05.2016, applicant came with JCB machine and broke the boundary of the respondents and entered the land of respondents. When respondents opposed the petitioner, the applicant hurled abuses and assaulted the lady persons. Respondents were trying to file report against the petitioner but police has not written any complaint against the petitioner. Then respondents sent complaint through registry post to Superintendent of Police. When the event was happened the huge crowd was gathered and someone intimated the Shakti Chowky and, thereafter, police came at the spot and intervened, but police did not take any action against the petitioner, and instead of taking any action against the petitioner, police has registered the case against the respondents and prosecuted them in false case. He further submits that it was the result of influence of the powerful party. The police has not taken any action on complaint

lodged in 03.05.2016 and 9.05.2016 by respondents, and after 20 days the petitioner has lodged fake complaint against the respondents which was registered. Because the police has not acted in a proper manner in not registering the case against the petitioner, though, respondent compelled to file complain against the petitioner under Section 200 of Cr.P.C. which is registered by the learned Trial Court and issued notice to the petitioner and other co-accused. The order of learned trial Court is well reasoned order and there is no illegality and infirmity in it.

5. Heard both the parties and perused the material available on record.

6. Main objection of petitioner is that when he filed complaint against the respondents and charge-sheet was filed, respondents also filed complaint case just to harass the petitioner. Petitioner has filed copies of charge-sheet which was filed against the respondents. It is clear from the documents that offence was registered against the respondents on 25.05.2016. Respondents also filed some documents, which shows that they filed written complaint on the same date i.e. on 03.05.2016 before Station Officer Outpost Sakri and Police Station Chakarbhata. They send written report on 09.05.2016 to Superintendent of Police, Bilaspur and then filed complaint case before the competent Court.

7. Respondents filed complaint under Section 200 of Cr.P.C. Sections 200, 201 and 204 which provides as under.

“200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the

discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case – *If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,--*

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-Section (1) until a list of the prosecution witnesses has been failed.

(3) In a proceeding instituted upon a complaint made in writing,

every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87.”

8. It is clear from the above Sections that if in the opinion of Magistrate, taking cognizance of an offence there is sufficient ground for proceeding, shall issue summons/warrant for causing the accuse to be brought or to appear at a certain time before said Magistrate.

9. In *Adalat Prasad v. Rooplal Jindal* [(2004) 7 SCC 338] Hon'ble Supreme Court held in para 14 as under:-

“14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this

Court in Mathew case that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.”

10. Thus, from the aforesaid judicial pronouncement by the Supreme Court in the matter of Adalat (Supra), it is clear that for registration of complaint case, the trial Court has to consider all oral and documentary evidence produced by complainant and if he thinks it fit, case should have been registered and issued summons/warrant against the accused persons. The learned trial Court find, prima facie, case against petitioner and registered the case on 12.04.2017.

11. In view of above, this Court is of the considered opinion that the order dated 12.04.2017, passed by the Court below being fully justified, do not call for any interference in revision petition.

12. Accordingly, this revision has no substance and it is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE