

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 292 of 2019**

{Arising out of order dated 07.03.2019 passed by learned Single Judge in Writ Petition (Cr) No. 150 of 2019}

- Narendra Juneja, Proprietor Sai Shraddha Hotel, Tahsil & District Raigarh, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh, through: Secretary, Department of Home & Police Affairs, Mahanadi Bhawan, New Mantralaya, Atal Nagar, District Raipur, Chhattisgarh.
2. The Superintendent of Police, Raigarh, District Raigarh, Chhattisgarh.
3. The Incharge Officer, Police Station Azak, Raigarh, District Raigarh, Chhattisgarh.
4. Vinay Sidar, S/o Hemlal Sidar, aged about 18 years, Caste Gond, R/o Binjkot, Police Station Chakradhar Nagar, Tahsil and District Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Manoj Paranjpe, Advocate.
For Respondents No.1 to 4:	:	Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Judgment on Board****Per P. R. Ramachandra Menon, Chief Justice****06.08.2019**

1. The correctness and sustainability of the verdict passed by the learned Single Judge giving a direction to the investigating agency to register a crime in tune with the law declare by the Supreme Court in ***Lalita Kumari v. Government of***

Uttar Pradesh; (2014) 2 SCC 1, without affording an opportunity of hearing to the Appellant, who was proposed to be arrayed as accused in connection with the crime, is the subject matter of challenge in the appeal.

2. Heard Shri Manoj Paranjpe, the learned counsel appearing for the Appellant and Shri Vikram Sharma, the learned counsel representing the State / Police.
3. The sum and substance of the case projected by the Appellant is that there were some disputes between the Appellant who is running a restaurant and another person by name Ashok Mehta who was also running a restaurant. The 4th Respondent herein was the employee of the Appellant earlier, who, for his own reasons, abandoned the service under the Appellant and joined the service of the rival named above.
4. In the course of time, so as to take revenge upon the Appellant, the rival operator won over the 4th Respondent and a false and fabricated complaint has been caused to be preferred before the Police. Immediately thereafter, the 4th Respondent approached the learned Single Judge by filing WP(Cr) No. 150 of 2019 with the following prayers:

“10.1 The Hon'ble Court may kindly be pleased to direct the respondent authorities particularly the respondent no. 2 and 3 to investigate the matter in a proper manner.

10.2 The Hon'ble Court may kindly be pleased to direct the respondent no. 2 and 3 to register an FIR against the respondent no. 4 on the complaint made by the petitioner dated 27.11.2018 (Annexure P/1).

10.3 That, the Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit and appropriate.

10.4 Cost of the petition may also be given.”

5. When the matter came for admission before the learned Single Judge, just after hearing the learned counsel appearing for the Petitioner and also the learned

counsel representing the State, an observation was made by the learned Single Judge that as per the report dated 27.11.2018 (Annexure P/1) and the subsequent report dated 11.01.2019 (Annexure P/2), *prima facie* reading of Annexure P/1 and P/2 revealed that a cognizance of offence was made out and it was accordingly, that a positive direction was given to the Police to register the crime and to conduct investigation, taking the proceeding to a logical conclusion.

6. The learned counsel for the Appellant submits that the observation made by learned Single Judge left no other way to the Police than to have registered a crime without applying their mind with reference to the facts and figures. Since the Appellant was not given an opportunity of hearing, the actual facts could not be brought to the notice of learned Single Judge. It is in the said circumstance, that the Appellant is constrained to move this Court by filing an appeal.
7. The learned counsel representing the Government submits that after passing the verdict by the learned Single Judge on 07.03.2019, crime was registered on 17.06.2019. It is stated that the registration of the crime was not done in a mechanical manner, but after proper application of mind. Investigation is going on and after completion of the investigation, charge sheet will be submitted in terms of Section 173(2) of the Cr.P.C, submits the learned counsel.
8. When the matter came up for consideration before this Court, notice was ordered to the 4th Respondent by registered post and also by 'dasti'. It is revealed from the endorsement that said Respondent could not be traced out. We are of the view that since we are not deciding the merits of the case, presence of the 4th Respondent is not required so as to have the matter finalized. It is recorded accordingly.
9. With regard to the challenge raised, we are of the view that the observation made by the learned Single Judge in 'paragraph 3', insofar as a finding was

rendered to the effect that *prima facie* reading of Annexure P/1 and P/2 would reveal that a cognizable offence was made out, is the objectionable part. It could have been by way of a direction to the Police / investigating agency to look into the facts and figures and to take appropriate steps in conformity with the law laid down by the Supreme Court in ***Lalita Kumari*** (*supra*) case, without expressing any opinion. We find some force in the said submission. In the said circumstances, we make it clear that the said observation by itself will not be of any consequence and the further proceedings will depend upon the outcome of the investigation to be done by the Police. With the above observation, the appeal stands disposed off.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge