

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 704 of 2019

B.D. Pradhan, S/o. Late M.L. Pradhan, Aged About 73 Years, R/o. Sarveshwari Sadan, B-130 Rajkishore Nagar, Phase- II, Police Station Sarkanda, Tehsil and District Bilaspur Chhattisgarh.

---- Applicant

Versus

Akhilesh Sonthaliya, S/o. Late Shri Rambabu Sontahliya, Aged About 36 Years, (CEO Inspire Industries Pvt. Ltd.), R/o. Sonthaliya Niwas, A-39, Vinoba Nagar, Bilaspur, Police Station : Tarbahar, Tahsil and District Bilaspur Chhattisgarh.

-----Respondent

For Applicant	: Mr. Upendra Bharat, Advocate
For Respondent	: Mr. Sunil Otmani, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

16/12/2019

1. By this revision petition, the petitioner has challenged the legality, propriety and correctness of the impugned order passed by the Sixth Additional Sessions Judge, Bilaspur in Criminal Revision No.239 of 2018 on 11.04.2019 by setting-aside the order passed by the learned Judicial Magistrate First Class, Bilaspur dated 13.09.2017, in Criminal Complaint Case No.110/2017.
2. The petitioner had filed a complaint under Section 200 of Cr.P.C. against the respondent. The learned Court of Judicial Magistrate

First Class passed the order dated 13.09.2017, taking cognizance against the respondent under Section 420 and 403 of the Indian Penal Code and ordered for issuance of summons. This order was challenged in Criminal Revision No.239 of 2018 and by the impugned order dated 11.04.2019, the order of learned Judicial Magistrate First Class for taking cognizance against the respondent, has been set-aside.

3. It is submitted by the counsel for the petitioner that the impugned order has been erroneously passed ignoring the principle of law and legal provisions. The dismissal of earlier application filed by the petitioner under Section 156(3) of Cr.P.C. shall have no affect on the subsequent complaint, which is filed under Section 200 of Cr.P.C.. The learned Trial Court has completed the enquiry and on the basis of evidence in enquiry, has come to the conclusion for taking cognizance against the respondent for the offence under Section 420 and 403 of the Indian Penal Code.
4. The learned Revisional Court has given weight to the order passed on an application under Section 156 (3) of CrP.C. by the learned Judicial Magistrate First Class, which was totally uncalled for. Placing reliance on the judgment of Supreme Court in case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra & Ors.**, reported in **2019 SCC OnLine SC 182**, it is submitted that once the learned Magistrate has evaluated the merits of the case and ordered for issuance of process, the correctness and otherwise of the allegation can be decided only in the trial. Referring to the judgment of Supreme Court in case of **Shivjee Singh Vs.**

Nagendra Tiwary & Ors., reported in **2011 (1) C.G.L.J. 40 (SC)**, it is submitted that Magistrate after making enquiry had found sufficient ground for proceeding and the grounds brought forth in the complaint case can not be ignored only because in the earlier application filed by the petitioner, he could not succeed in getting favourable order. Therefore, it is prayed that the impugned order be set-aside.

5. Counsel for the respondents opposes the petition and the submissions made in this regard. It is submitted that dispute between the parties is purely of civil nature. Regarding earlier application filed by the petitioner under Section 156 (3) of Cr.P.C., the S.H.O. Police Station, Tarbahar had submitted a report vide Annexure R-1 making a statement that there is dispute regarding transaction between the parties and the dispute is of civil nature and on that basis, the learned C.J.M. had passed the order dated 08.09.2016 by dismissing the application under Section 156 (3) of Cr.P.C.. That order was challenged in Criminal Revision No.4/2017, before the Court of Sessions Judge and the same was dismissed by the order dated 10.01.2017, subsequent to which, in arm twisting manner, the petitioner has filed the present complaint which could not have been entertained by the learned J.M.F.C.. It is submitted that Section 362 of Cr.P.C. puts a clear bar on criminal Courts to recall the orders passed by them. Placing reliance on the judgment of High Court of Andhra Pradesh in case of **P.V. Krishna Prasad Vs. K.V.N. Koteswara Rao and Anr.** Reported in **1990 SCC OnLine AP 291**, it is submitted that while considering on application

under Section 156 (3) of Cr.P.C., the Judicial Magistrate applies its mind in discharge of judicial function and the moment he takes decision for taking cognizance, he becomes functus officio. It is submitted that in this case, the learned Judicial Magistrate First Class had already applied its mind and declined to take cognizance in the case under Section 156(3) of Cr.P.C.. Therefore, the order of the Judicial Magistrate dated 13.09.2017 is the recall of the earlier order passed on 08.09.2016, which is not permitted under the Code of Criminal Procedure. Hence, no error has been committed by the Revisional Court. The petition be dismissed.

6. In reply, it is submitted that on the basis of the complaint case filed, the learned Magistrate had found prima-facie case for proceeding against the respondent, therefore, that order passed was without any flaw. The learned Revisional Court has taken into consideration the extraneous substance presented before the Revisional Court for the first time, which is not permissible, therefore, the impugned order suffers from infirmity and is liable to be set-aside.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. The scope of revision under Section 397 Cr.P.C. is only to the extent of examining the legality, propriety and correctness of the order passed by the Court below. Therefore, the Revisional Court has to be limit its exercise of jurisdiction to examine these points only and also examine the documents placed on the record of the Court below. It is found that the complainant filed complaint under Section 200 of Cr.P.C. on 08.02.2017 mentioning that the application was

earlier filed under Section 156 (3) of Cr.P.C., but there is no mention of result. In the enquiry made by the learned J.M.F.C., the petitioner/complainant has examined himself and produced some documents, which does not include the orders passed by the J.M.F.C. and the Revisional Court on the application filed under Section 156 (3) of Cr.P.C, therefore, there was nothing on record present regarding earlier proceeding under Section 156 (3) of Cr.P.C. initiated by the petitioner for taking notice of by the learned J.M.F.C. at the time of passing order dated 13.09.2017. The facts of the earlier proceeding under Section 156 (3) of Cr.P.C. have been brought to the notice of the Revisional Court and the Revisional Court has after relying upon the same has passed the impugned order.

9. Provision under Section 397 Cr.P.C. read with Section 399 of Cr.P.C., which provides for revision by Session Judges and Section 401 of Cr.P.C., provides for powers, which may be exercised by the Sessions Judge in the revision petition, does not provide anywhere that the fact or other evidence, which were not present before the Court taking cognizance in any complaint, can be taken into consideration for setting-aside any order passed by the same Court. Therefore, when such fact or evidence brought for the first time before the Revisional Court, can not be taken into consideration for deciding the revision petition.
10. The learned trial Court has in Complaint Case No.110 of 2017 after passing the order dated 13.09.2017 taking cognizance against the respondent had issued process and followed the procedure for

warrant trial, which is provided under Section 244 of Cr.P.C., however, the respondent has not participated in the same. The respondent has option to participate in the proceeding under Section 244 of Cr.P.C. and then to make a prayer for discharge under Section 245 of Cr.P.C.. Following this procedure, in the case, would have been the right course of action, instead of which, the respondent preferred a revision petition and the order though passed in the revision in his favour can not be regarded to be a sustainable order.

11. In view of the discussion made and the position of law as discussed hereinabove, after due consideration of all the submissions and all the points in this case, this petition is deserves to be allowed, which is allowed. The impugned order passed by the Sixth Additional Sessions Judge, Bilaspur in Criminal Revision No.239 of 2018 on 11.04.2019 is set-aside.
12. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge