

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 319 of 2017**

Shail Kumar Joshi S/o Late Shri Manik Ram Joshi, Aged About 56 Years R/o Village Manki, Post Salheghari, Tahsil Thana Lormi, District Mungeli, Chhattisgarh.

--- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Department of Home, Mantralya, Mahanadi Bhavan, Naya Raipur, Raipur, Chhattisgarh,
2. Superintendent of Police, District Mungeli, Chhattisgarh, District : Mungeli, Chhattisgarh
3. Station House Officer, P.S. Lormi, District Mungeli, District : Mungeli, Chhattisgarh
4. Smt. Sarojani Devi Dahariya W/o Late Shri Lal Bahadur Dahariya, Sarpanch, Gram Panchayat Manki, R/o Gram Manki, Tahsil Thana Lormi, District Mungeli, Chhattisgarh
5. Jai Kumar Anant S/o Aatma Ram, Secretary Rojgar Sahayak, Gram Dharampur, Tahsil Thana Lormi, District : Mungeli, Chhattisgarh
6. Narad Kumar S/o Bodali, Gram Manki, Tahsil Thana Lormi, District Mungeli, , Chhattisgarh
7. Smt. Manita Rai W/o Holi Ram, Gram Manki, Tahsil Thana Lormi, District : Mungeli, Chhattisgarh
8. Manik Lal Dahariya S/o Late Shri Tatu Ram, Gram Manki, Tahsil Thana Lormi, District Mungeli, Mungeli, Chhattisgarh

--- Respondents

For Petitioner	:	Shri Ishan Verma, Advocate
For Respondents-State	:	Shri Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****31.01.2019**

1. The prayer made in this writ petition is to register FIR against

certain persons. It is contended that few of the persons did not work in MNGREGA works, but in their names the respondents had illegally withdrawn the money and forged payments were shown to have been made to the persons who did not work. It is submitted that despite such report made, the police has not registered the FIR. Learned counsel placed reliance on *Lalita Kumari Vs. Government of Uttar Pradesh and others (2014) 2 SCC 1 Para 20*.

2. In reply filed by the State which is supported by the affidavit, it is stated that the petitioner has illegally withdrawn the money for making forgery payments in the name of persons who did not work under the MNGREGA. It is further submitted that apart from the other facts, the petitioner himself was involved in Crime No.381 for the offence punishable u/s 302, 304, 120-B read with section 34 of IPC at the police station Lormi. Further the reply of the State says that the police after enquiry came to conclusion that no cognizable offence was made out pursuant to the complaint made by the petitioner.
3. It appears that the police after receipt of the complaint from the petitioner has taken exercise to complete investigation. Once it is found in the detailed enquiry that no offence is made out, it is for the petitioner to obtain the documents under the RTI Act and thereafter file necessary complaint.
4. The Supreme Court way back in the year 1968 rendered the dictum in case of *Abhinandan Jha v.Dinesh Mishra AIR 1968 SC 117* and held that there is no power, expressly or impliedly

conferred, under the Code of Criminal Procedure on a Magistrate to call upon the Police to submit a charge sheet when it was found by the Police after conducting enquiry that no case is made out for sending an accused for trial. In the said case, it has been further held that the functions of the Magistrate and Police are entirely different and though, the Magistrate may or may not accept the report, and take suitable action, according to law, he cannot impinge upon the jurisdiction of the Police by compelling them to change their opinion so as to accord with his view.

5. In view of the above facts and law, the petition has no merit and is dismissed.

**Sd/-
Goutam Bhaduri
Judge**