

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 424 of 2019

1. Pawan Kumar S/o Shri Pandru Ram Aged About 22 Years R/o Village Nakapara, Koshalnaar, Barsur, Barsoor, Dakshin Bastar, P.S.- Geedam, District- Geedam, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home Affairs, Indravati Bhavan, New Mantralya, Atal Nagar, New Raipur, Chhattisgarh
2. Superintendent Of Police District- Geedam, Chhattisgarh
3. Station House Officer P.S. Geedam, District- Geedam, Chhattisgarh

---- Respondents

For Petitioners	: Mr. Devarshi Thakur, Advocate.
For State/respondents	: Mr. Lav Sharma, Panel Lawyer.

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

09-07-2019

1. This writ petition has been brought under Article 226 of the Constitution of India praying for issuance of an appropriate writ.
2. It is submitted by learned counsel for the petitioner that being induced by the Core Committee members and others of Chit Fund Company, Nirmal Infra Home Corporation Limited (NICL), the petitioner made investments in different schemes which were never refunded to him. The petitioner has made a complaint, but, no action had been taken by the respondent authorities and F.I.R. has not been lodged in the complaint filed by the petitioner. Therefore, it is prayed that in view of judgment of Hon'ble the Supreme Court in the matter of ***Lalita Kumari Vs. Government of Uttar Pradesh & Others***, (2014) 2 SCC 1, the petition may be allowed and suitable directions may be issued.

Reliance has been placed on the order dated 19-04-2018 passed by this Court in the matter of ***Gyarasi Modi Vs. State of Chhattisgarh and others*** in W.P.(Cr.) No.237 of 2018. Reliance has also been placed on the order dated 26-08-2016 passed by this Court in the matter of ***Bhushan Singh Rathiya Vs.***

State of Chhattisgarh and others in Writ Petition (Cr.) No.9 of 2016 and other orders which have been passed by this Court.

It is also submitted that there is no provision in Cr.P.C. where an investigation agency must provide a hearing to the affected party before registering FIR. In this regard reliance has been placed on the order passed by Hon'ble the Supreme Court in the matter of **Samaj Parivartan Samudaya and others v. State of Karnataka and others**, (2012) 7 SCC 407.

3. Learned counsel for State/respondents submits that similar complaint has been registered in F.I.R. in the police station of the State which has been investigated, therefore, there is no need for registering fresh F.I.R. The petitioner in this case can join as aggrieved person in those cases which are being investigated.

4. Heard learned counsel for the parties and perused the documents.

5. On perusal of copy of the complaint filed by the petitioner in this petition which has been addressed to the S.H.O. and other officials of the police station, it appears that there is material in the complaint made by the petitioner, which needs investigation. Hon'ble the Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh & Others** (supra) it has held that:-

“**120.** In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him

discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/ family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

6. Therefore, the view is very clearly stated that the police official has bounden duty to lodge F.I.R. if the complaint discloses commission of cognizable offence. It is held that the complaint filed by the petitioner has some substance which needs investigation. The respondents are directed that complaint filed by the petitioner before the police station be investigated in accordance with law laid down by Hon'ble the Supreme Court in the matter of ***Lalita Kumari Vs. Government of Uttar Pradesh and others*** (supra). This petition is disposed off with the direction abovementioned.

Sd/-
(Rajendra Chandra Singh Samant)
Judge