

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 507 of 2019**

1. Faiz Ahmed S/o Shakil Ahmed, Aged About 27 Years, R/o S.P. Motor Parts, near Anand Talkies, Balve Market, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Shakil Ahmed (father in law) S/o Late Kammal Solanki, Aged About 52 Years, R/o S.P. Motor Parts, near Anand Talkies, Balve Market, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Shabnam Parveen (mother in law) W/o Shaqeel Ahmed, Aged About 46 Years, R/o S.P. Motor Parts, near Anand Talkies, Balve Market, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Riyaz Ahmed S/o Late Sheikh Maqbul, Aged About 44 Years, R/o R.N.-227, Hudco, Bhilai, District Durg - Chhattisgarh, District : Durg, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Home (Police), Mantralaya, Atal Nagar, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Station House Officer, Police Station, Civil Line, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Mohammed Shahid S/o Late Hazi Abdul Hussian, Aged About 49 Years, R/o Shiv Chowk, Kududand, Bilaspur, Police Station Civil Line, District - Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioners – Ms. Sharmila Singhai, Advocate.

For State/Respondents 1 and 2 – Mr. Aditya Sharma, Panel Lawyer.

For Respondent No.3 – Mr. Prasun Kumar Bhaduri, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****19/07/2019**

1. This petition under Article 226 of the Constitution of India is directed against the FIR lodged by respondent No.3.
2. It is submitted by learned counsel for the petitioners that on an application filed by respondent No.3 under Section 156(3) of the

Cr.P.C. the police has been directed by the JMFC to lodge the FIR for commission of offence under Section 452, 498A, 294, 506B read with Section 34 of the IPC and conduct the investigation. This FIR has been lodged without complying with the mandate in **Lalita Kumari Vs. Government of Uttar Pradesh and others**, (2014) 2 SCC 1, in which it has been specifically directed that in such cases a preliminary inquiry is necessary.

3. It is further submitted by learned counsel for the petitioners that there are instances to show that it is a false complaint and it had been a case of simple matrimonial discord. On the earlier complaint made to the police a counseling procedure had taken place in Mahila Thana Bilaspur, copy of the same is produced along with this petition which shows that the wife of petitioner No.1 has clearly refused to participate in the meeting and stated that she does not want to go her matrimonial home. The petitioner No.1 had made several complaints to the police making various allegations against his wife, but, the police has taken no action on those complaints and issued notice under Section 155 of the Cr.P.C. Therefore, lodging of the FIR without giving an opportunity to the petitioners and without complying with the provisions under Section 156(3) of the Cr.P.C. is bad in law. Therefore, it is prayed that the petition be admitted for hearing and interim relief be granted in favour of the petitioners.
4. Learned State counsel submits that the petition filed under Article 226 of the Constitution of India is not maintainable for the reason that the petitioners had remedy to file petition under Section 482 of the Cr.P.C. Petitioner No.1 and 4 have already obtained anticipatory

bail in the case against them. Therefore, petitioner No.2 and 3 can also approach the Court making same prayer. Referring to the judgment delivered in the matter of **Lalita Kumari Vs. Government of Uttar Pradesh and others** (supra) it is submitted that no such direction has been given by the Apex Court that preliminary inquiry shall be necessary in every case and it has been specifically made clear that inquiry means “inquiry under Section 2(g) of the Code of Criminal Procedure” which is an inquiry by judicial Magistrate and there is specific direction that registration of FIR is mandatory under Section 154 of the Cr.P.C. in cases of commission of cognizable offence and no preliminary inquiry is permissible in such cases. It is only in situation when information received does not disclose a cognizable offence, but indicates a necessity of an inquiry, a preliminary inquiry may be conducted only to ascertain that commission of a cognizable offence is disclosed or not. Therefore, it is submitted that the contents of the complaint made in this case very clearly disclose commission of cognizable offence, hence, no error has been committed in this case.

5. In reply it is submitted by learned counsel for the petitioners that order has been passed without following preliminary procedure of Section 154(3) & (4) of the Cr.P.C., therefore, the petition is maintainable under Article 226 of the Constitution of India.
6. Heard learned counsel for the parties and perused the documents.
7. On perusal of the application filed by respondent No.3 under Section 156(3) of the Cr.P.C. which is annexed as Annexure-P/3, there appears to be substance of accusation present on the basis of

which the Court below has ordered lodging of the FIR. There is no such rule that for bringing application under Section 156(3) of the Cr.P.C. compliance of Section 154(3) and (4) of the Cr.P.C. is necessary. The direction of Hon'ble the Supreme Court in the matter of **Lalita Kumari Vs. Government of Uttar Pradesh and others** (supra) for preliminary inquiry is not meant for every case, hence, it appears that this petition is without any substance, therefore, it is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil