

HIGH COURT OF CHHATTISGARH BILASPUR

Order Reserved on : 15.11.2019

Order Passed on : 10/12/2019

Cr.R. 903 of 2019

1. Dr. Khursid Khan S/o Shri Attaullah Khan Aged About 49 Years
2. Noor Ullah Khan S/o Shri Attaullah Khan Aged About 57 Years
3. Amir Ullah Khan S/o Shri Attaullah Khan Aged About 53 Years

(All are r/o Ward No. 4, Turrapara, Dharamjaygarh, Thana And Tahsil - Dharamjaygarh, Civil And Revenue District Raigarh Chhattisgarh)

---- Applicants

Versus

1. State Of Chhattisgarh Through The District Magistrate Raigarh, District Raigarh Chhattisgarh
2. Smt. Basanti Wd/o Late Shri Anandram Aged About 80 Years R/o Gersa Khamhar Khadgaon, Rangalbahri, Dharamjaygarh, Peeparmar, Thana And Tahsil - Dharamjaygarh, Civil And Revenue District Raigarh Chhattisgarh

---- Respondents

For Petitioners	: Mr. Sunil Sahu, Advocate.
For respondent No.1/State	: Mr. Ghanshyam Patel & Mr. Adil Minhaj, Govt. Advocates.
For Respondent No.2	: Mr. Manoj Paranjpe & Mr. Vivek Mishra, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

10/12/2019

1. This petition has been brought being aggrieved by the order dated 28.06.2019 passed by the Fifth Additional Sessions Judge, Raigarh,

District- Raigarh, C.G. in Criminal Revision No.111/2018 by allowing the revision petition and setting aside the order dated 07.06.2018 passed by the trial court and also further directing the trial Court to hear the matter afresh.

2. The brief facts of the case are these that respondent No.2 is a member of Scheduled Tribe. The property in dispute was recorded in the name of one Ghasram of whom the respondent no.2 was the successor. It is alleged that the applicant No.1, taking benefit of the illiteracy and ignorance of the respondent no.2, obtained her signature on pretext that he will help her in getting the mutation entered in the records and thereafter, on that basis, he prepared a forged power of attorney and made use of the same for registering a sale deed in the name of the applicants. The respondent No.2 has filed a private complaint, after making an inquiry under Section 202 of Cr.P.C., the trial Court has dismissed the complaint under Section 203 of Cr.P.C., vide order dated 07.06.2018.
3. Respondent No.2 then preferred a Criminal Revision No.111/2018 before the Sessions court in which the order of the trial Court has been set aside and direction has been issued for hearing the matter afresh.
4. It is submitted by the learned counsel for the applicants that respondent No.2 has made a totally false complaint against the applicants. After the registration of sale deed, the mutation proceeding was initiated before Najul Officer Dharamjaigarh, which was registered as revenue case No.21-A-6/2013-14. The respondent No.2 herself gave appearance before the said authority and supported the applicants. There is also a Civil Suit pending between the parties, therefore, it is a case of civil nature. The trial Court has rightly appreciated the complaint and the evidence recorded under Section 202 of Cr.P.C. and passed the correct

order which has been erroneously set aside in the revision by the Revisional Court. The order sheets of the trial Court mentions about calling of inquiry report and the inquiry report submitted by the police was in favour of the applicants, which was taken into consideration by the trial Court but not considered at all by the revisionary Court. Therefore, the impugned order suffers from infirmity which is not sustainable.

5. Reliance is placed on the judgment of Supreme Court in **S.K. Sinha Chief Enforcement Officer Vs. Videocon International Ltd.** reported in **(2008) 2 SCC 492**, **Balveer Singh & Anr. Vs. State of Rajasthan & Anr.** reported in **(2016) 6 SCC 680**, **Shivjee Singh Vs. Nagendra Tiwary & Ors**, reported in **2011 (1) C.G.L.J. 40 (SC)**, **Elisha Walker Vs. Smt. Kusum Pushpa Tirki & Ors.** reported in **2002 (1) M.P.H.T. 73 (CG)** and the judgment of this Court in **P.S. Chauhan Vs. Smt. Deoki Bai & Ors.** reported in **2009 (4) C.G.L.J. 131**, on the basis of these submissions and these citations, it is submitted that the case is purely of civil nature. Therefore, there is no material present to take cognizance in the complaint filed by the respondent no.2. Hence, it is prayed that the impugned order be set aside.
6. Learned counsel for the respondent No.1 makes formal objection as it is a complaint case.
7. Learned counsel for respondent No.2 submits that the complaint was filed praying for taking cognizance in offences under Sections 3(1)(iv), 3(1)(v) and 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989, therefore, the learned Judicial Magistrate First Class was not in a position to dismiss the complaint for the simple reason that the case was triable by the Special Court. Although the trial Court ordered for inquiry report of the police but this was not an exercise of the power

under Section 156(3) of Cr.P.C.

8. Placing reliance on the judgment of supreme Court in ***Devarapalli Lakshminarayana Reddy & Ors. Vs. V. Narayana Reddy & Ors.*** reported in **1976 (3) SCC 252**, it is submitted that it was held by the Supreme Court that the learned Magistrate has ordered for investigation in the case under the provision of Section 202 of Cr.P.C., which is a post cognizance stage. Apart from that, the first provision of Section 202(1) of Cr.P.C. itself is a restriction on the Magistrate for calling any investigation report, if the case is exclusively triable by the Court of Sessions. Therefore, in this case when the Magistrate passed order for calling the police report, the cognizance was already taken. However, in the present scenario, after the amendment in SC/ST (Prevention of Atrocities) Act, 1989, the complaint can be directly filed before the Special Court. Making reference to the judgment of this Court in ***W.P. (Cr.) No.112/2015*** between ***Smt. Achla D. Sapre Vs. Smt. Asha Mahilkar (Rajput) and Anr.*** decided on 25.02.2016, it is submitted that Section 14 of the amended Act, 1989, provides that Special Court can directly take cognizance in the cases of commission of offence under the Act, 1989. In this judgment reference has also been made to the judgment of Supreme Court in ***Gangula Ashok and Anr. Vs. State of Andhra Pradesh*** reported in **(2000) 2 SCC 504**, wherein it was held that the Special Court can take cognizance only on the case being committed to it. In the case concerned, the learned Magistrate has taken cognizance in the complaint filed with respect to commission of offence under the Act of 1989 and such order by the Magistrate was held to be without jurisdiction. It is further argued that the learned Judge of the Revisional Court has also not taken notice of this fact.
9. Reliance has also been placed on the judgment of Supreme Court in ***Sunil Bharti Mittal Vs. C.B.I.*** reported in **2015 (4) SCC 609** and

Dilawar Singh Vs. State of Delhi reported in **2007 (12) SCC 641**.

10. In reply, it is submitted that the learned Magistrate has not taken cognizance in the case could not have been completed without the completion of procedure under Section 204 of Cr.P.C. that is the issuance of notice to the accused person. Apart from that, a complaint for offences under the Act, 1989 could have been filed directly before the Special Court. Therefore, the direction given in the impugned order to consider the matter afresh is itself in not in accordance with law.

11. Heard learned counsel for both the parties and perused the documents.

12. On perusal of the copy of complaint filed along with petition, it is found that there are allegations made against the applicants regarding the commission of offence under SC/ST Act (Prevention of Atrocities) Act, 1989 along with the commission of offence under the provisions of I.P.C. There is very clearly prayer made in the complaint for taking cognizance for the offence under the Act, 1989. The learned Magistrate did not give any consideration to these allegations and the prayer made. No specific date is mentioned regarding the offence committed in the complaint. However, in the statement recorded under Section 202 of Cr.P.C., it appears that the incident is of year 2013, the complaint was filed on 26.08.2015 and the amended provision under Section 14 of the Act, 1989 has come into force from 26.01.2016. Therefore, on the date of filing complaint, the procedure which could have been adopted by the learned Magistrate in this case would have been of completing the case under Section 209 of Cr.P.C. for the reason that the judgment in ***Gangula Ashok and Anr. Vs. State of Andhra Pradesh*** (Supra) had been in force before the amendment was incorporated in the year 2016.

13. It has been held in ***Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors.*** decided by Supreme Court and reported in ***AIR***

AIR 1994 (SC) 2623 in paragraph 26 as under:-

26.The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases, the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation, unless made retrospective, either expressly or by necessary intendment, whereas a Statute which merely affects procedure, unless such a construction is texturally impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal, even though remedial, is substantive in nature.

(iii) Every litigant has a vested right in substantive law, but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in

operation, unless otherwise provided, either expressly or by necessary implication."

14. Further the Section 14 of SS/ST (Prevention of Atrocities) Act, 1989 amended provision is reproduced as under:-

14. Special Court and Exclusive Special Court.— (1)

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day to day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing.

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

In view of the above pronouncement by the Supreme Court, it can be said that amended provision under Section 14 of the Act, 1989 merely affects procedure and there is nothing to suggest otherwise.

15. On perusal of the Section 14 of the Act, 1989, it can be presumed that this provision has a retrospective effects. Hence, at this stage, when the provision under Section 14 of the Act, 1989 is in force and it relates to procedure for entertaining a complaint and taking cognizance with respect to offence under the Act, 1989, therefore, there shall not be any need for committal on the case in this particular matter.

16. On the basis of the discussions made hereinabove and considering on the submissions made from both the sides, it is held that the order passed by the learned Magistrate in the complaint case dated 26.08.2015 was without jurisdiction. The learned Revisional Court has failed to appreciate the averments and prayer made in the complaint and passed order in that direction. The order setting aside the dismissal of complaint by the Revisional Court is simply based on the factual grounds. Although there is a mention in paragraph 14 of the order that the case is triable by the Special Court and the calling of report from police was prohibited for the trial Court, but no order has been passed to remedy the lack of jurisdiction of the trial Court before which the complaint was filed. However, the setting aside of the order of learned Magistrate appears to be a proper conclusion in that order. Therefore, the lack of remedial part can be made good in the order of this Court.

17. On the basis of these considerations, the prayer in this revision petition for setting aside the order of the Revisional Court needs no indulgence but the direction given in the impugned order needs to be interfered

with. Therefore, this revision petition is allowed with modification by maintaining the order for setting aside the order dated 07.06.2018 passed by the learned trial Court. The direction granting liberty the trial Court to reconsider on the matter is set aside and instead it is directed that the respondent No.2 has liberty to file fresh complaint directly before the Special Court having jurisdiction by making a reference to the earlier proceedings and the orders passed by the trial Court, Revisional Court and this Court. If any such complaint is filed before the Special Court having jurisdiction, then such Court is directed to consider and proceed with the case in accordance with law applicable.

18. Accordingly, the petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge