AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 294 of 2017

Rajkumar Mishra S/o Late L.P. Mishra aged about 64 years, R/o Kashyap Colony, Bilaspur C.G.

----Petitioner
;

Versus

Gurjeet Kaur Bajwa W/o Shri Rajendra Singh aged about 57 years, R/o B-4, Minocha Colony, PS. Civil Lines, Bilaspur Distt. Bilaspur C.G.

---- Respondent/Complainant

For petitioner	:	Mr. Abhishek Sinha, Advocate.
For Respondent	:	None

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/05/2019

1. Petitioner is an advocate working as a Notary duly appointed under the provisions of the Notaries Act, 1952 (hereinafter called as 'Act of 1952') and Rules made thereunder, while discharging his duty of Notary under the provisions of Act of 1952 and Rules made thereunder, he authenticated an Anubandh/Agreement on 18th /19th December 2004 in presence of two witnesses viz. Sukhdev Singh and Rajkumar Gupta. Thereafter respondent/complainant herein filed a complaint under Sections 465, 467, 468, 471, and 474 read-with Section 120-B of the IPC against the accused therein including the petitioner herein alleging commission of above-mentioned offences, in which the learned Judicial Magistrate First Class, by order dated 25-01-2016 took cognizance of offences under Section 420 read-with Section 120-B of the IPC against the accused person including the

petitioner.

2. The petitioner herein calls in question the said order taking cognizance of above-stated offences *inter alia* contending that such a cognizance of offence against him (Notary) is expressly barred by provisions contained in Section 13(1) of the Act of 1952, as such, cognizance taken by the learned Judicial Magistrate First Class deserves to be set aside.

3. None appears for the respondent, though served. No reply has been filed.

4. Mr. Abhishek Sinha, learned counsel for the petitioner would submit that such a cognizance taken is expressly barred by provisions contained in Section 13(1) of the Act of 1952 as the provisions contained in Section 13(1) of the Act of 1952 is mandatory in nature, as such, order taking cognizance is expressly barred and deserves to be set aside.

5. I have heard learned counsel for the petitioner, considered his submission made herein-above and went through the record with utmost circumspection.

6. In order to appreciate the submissions, it would be appropriate to notice Section 13(1) of the Act of 1952 which states as under:-

> (1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

A careful perusal of above-stated provision would show that the legislature in its wisdom has mandated that no court shall take cognizance of any offence committed by a Notary in the exercise or purported exercise of his functions under this Act except on complaint

in writing made by the officer authorised by Central Government or a State Government by general or special order.

7. It is settled law that the mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. Crawford in its Statutory Construction (p. 523) has observed as under:-

> "Prohibitive or negative words can rarely, if ever be directory. And this is so, even though the statute provides no penalty for disobedience."

8. In the matter of **M. Pentiah v. M. Muddala Veeramallappa**[1] Subbarao speaking for the Supreme Court observed as under:-

> "Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative."

9. Similar is the proposition laid down by the Supreme Court in the matter of **Nasiruddin v. Sitaram Agrawal**[2]

10. Justice G.P. Singh in his celebrated text, Principles of Statutory Interpretation 14th edition (p. 447) observed as under:-

> "Section 7 of the Armed Forces (Jammu and Kashmir) special powers Act 1990, provides "No prosecution, suit or other legal proceedings shall be instituted except with the previous saction of Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by the Act. The Supreme Court held that use of word "No" in section 7 of the Act denotes mandatory requirement of obtaining prior sanction of Central Government. Before institution of the prosecution, suit or proceeding." (**General Officer Commanding Rashtriya Rifles v. CBI**)[3]

11. Section 13(1) of the Notary Act, 1952 clearly bars the act of taking cognizance of any offence against the Notary in exercise or purported exercise of his function under the Act except upon a complaint in writing made by an officer authorised by Central Government or State

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1 AIR 1961 SC 1107
2 (2003) 2 SCC 577
3 (2012) 6 SCC 444

Government by general or special order. Therefore, filing of a complaint against a Notary of his function performed under the Act by upon an authorization of an officer of Central/State Government is mandatory requirement of law for institution of valid complaint as per provision under Section 13(1) is mandatory in nature.

12. At this stage, it would be expedient to notice the functions entrusted to the Notary under the Act of 1952. Section 8(1)(a) of the Act provides as under:-

> **8. Functions of notaries.**- (1) A notary may do all or any of the following acts by virtue of his office, namely:-
> (a) verify, authenticate, certify or attest the execution of any instrument;
> (b) to (i) xxx xxx xxx xxx

13. Reverting to the facts of present case in the light of principle of law laid down in the above-stated Judgments and in view of above-stated legal analysis, it is quite vivid that in the present case the accused/petitioner is an advocate working as a Notary and authenticated the document in question under Section 8(1)(a) of the Act of 1952 in performance of statutory duty conferred upon him by Act of 1952. The questioned authentication of agreement would clearly fall within the meaning of Section 8(1)(a) of the Act of 1952. Therefore, the bar under Section 13(1) of the Act of 1952 would squarely attract and far alleged offences against the petitioner, the learned Magistrate could not have taken cognizance of, except on the complaint filed in the manner indicated under Section 13(1) of the Act of 1952.

14. The Karnataka High Court in the matters of **V. Ranga Ramu vs. State of Karnataka**[4] and Allahabad High Court in the matter of

4 1999 CRI. L.J. 561

Dinesh Chandra Sinhav v. State of U.P.[5] has held that in absence of any complaint by the Officer authorised by Central Government or State Government regarding the duty of notary, the order taking cognizance is not proper and accused is entitled for discharge.

15. In the considered opinion of this Court, cognizance of offences which has been taken by learned Judicial Magistrate First Class against the petitioner is clearly hit by Section 13(1) of the Act of 1952 in absence of any complaint regarding such duty of notary by the officer authorised by the Central or State Government by general or special order.

16. As a fallout and consequence of the aforesaid discussion, the order taking cognizance *qua* the petitioner by order dated 25-01-2016 as well as the revisional order dated 07-01-2017 is hereby quashed/set aside, and petitioner is discharged from the above-stated offences however, it will continue against the other accused, if any, for which this Court has not expressed any opinion.

17. The petition under Section 482 of the CrPC is allowed to the extent indicated herein-above.

Sd/-

(Sanjay K. Agrawal)
Judge

Pawan

5 2017 CRI. L.J. 3015

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No. 294 of 2017

Rajkumar Mishra

Versus

Gurjeet Kaur Bajwa

Head Note

No complaint would lie against the Notary for function discharged by him under the Act unless complaint is filed by an officer authorised by Central/State Government.

नोटरी के विरुद्ध उसके द्वारा अधिनियम के अंतर्गत किये गये कार्यो के लिए कोई शिकायत मान्य नहीं होगी जब तक कि शिकायत केन्द्र / राज्य सरकार के किसी अधिकृत अधिकारी द्वारा संस्थित न की जाए ।