

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 580 of 2019

- Bhajan Kumar Agrawal S/o Shri Dhansiram Agrawal Aged About 50 Years R/o B-7, House Adityam Choprapara, Police Station Kotwali Ambikapur, District Sarguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh
2. Director General Of Police, Police Headquarter, New Raipur, Raipur Chhattisgarh
3. Inspector General Of Police, Sarguja Division, Ambikapur, District Sarguja Chhattisgarh
4. Superintendent Of Police, Ambikapur District Sarguja Chhattisgarh
5. Station House Officer, Police Station Gandhinagar, Ambikapur, District Sarguja Chhattisgarh
6. Dharendra Agrawal R/o Deviganj Road, Joda Pipal Gali, Ambikapur, District Sarguja Chhattisgarh
7. Devendra Agrawal R/o Deviganj Road, Joda Pipal Gali, Ambikapur, District Sarguja Chhattisgarh

---- Respondents

For Petitioner	: Mr. Sunil Otvani, Advocate.
For State	: Mr. Devendra Pratap Singh, Dy.A.G.
For Respondents No.6 and7.	: Mr. Sourabha Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-10-2019

Heard.

1. This petition has been brought under Article 226/227 of Constitution of India praying for issuance of appropriate writ and directions.

2. Learned counsel for the petitioner submitted that the incident is this that on 05.05.2019, respondent No.6 and 7 unauthorizedly entered into the premises of the petitioner. They abused the petitioner's son, threatened him and also assaulted one employee of the petitioner. The petitioner's son was then asked to call his father, when the petitioner arrived on the spot, he was assaulted by respondent No.6 and 7 with a rod on his head with an intention to cause his death because of which he suffered injuries. On the information given by this petitioner, F.I.R. has been lodged registering offence under Section 452, 294, 506, 323 and 34 of I.P.C.
3. It is submitted that according to the statement given and the injuries caused to the victim, it was clearly a case of attempt to murder. Therefore, the offence under section 307 of I.P.C. had to be registered. The I.G. of Police Station Sarguja Range as of memo dated 02.07.2019 vide Annexure-P/4 has specifically directed respondent No.4 to investigate the case in the light of commission of offence under Section 307 of I.P.C. Further the Deputy Director, Prosecution has also given an opinion vide Annexure-P/5 that according to the evidence and other circumstances present, the ingredients for commission of offence under Section 307/326 of I.P.C. are present. Despite this direction, the respondent No.4 has not taken care to make any further investigation and register any further offence and the case.
4. Placing reliance on the judgment of Supreme Court in ***P. Chidambaram Vs. Directorate of Enforcement*** reported in ***2019 SCC OnLine SC 1143*** in paragraph 55, it is submitted that, it is a well settled law that the Court can peruse the case diary materials collected during the investigation even before the commencement of trial to see that the investigation is proceeding in the right direction and there is no mis-use

or abuse of process in the investigation. Therefore, this Court exercising constitutional jurisdiction can scrutinize the material available and draw the conclusion. Placing reliance on the judgment of Supreme Court in ***State of Madhya Pradesh Vs. Harjeet Singh and Anr.*** Reported in ***2019 SCC OnLine SC 231***, it is submitted that Section 307 of I.P.C. uses the term "hurt" which has been explained in Section 319 of I.P.C. and in not "grievous hurt" within the meaning of Section 320 of I.P.C. Therefore, infliction of injury on any vital part of the body by itself is sufficient to make out that the intention of the assailant was to cause death. Therefore, it is prayed that specific direction be issued.

5. The learned counsel for the State opposes of the petition and the submissions made in this respect. It is submitted that according to the medico legal examination report the injuries caused to the injured have been reported to be of simple in nature. A further query was also made from the same Medical Officer, but even then he has given a negative report. Therefore, there is no substance found for registration of offence under Section 307 of I.P.C.
6. Learned counsel appearing on behalf of the respondent No.6 and 7 submits that the Investigation Officer has investigated the case and the charge-sheet is prepared but respondent No.5 is being compelled by the prosecutor to add offence under Section 307 of I.P.C. the Higher Authorities are interfering with the investigation that has been made by respondent No.5. The Deputy Director, Prosecution is not an authority to give any opinion and further there is no provision in Cr.P.C. that before filing charge-sheet, the investigation has to seek any opinion from the public prosecutor. Reliance is placed on the judgment of Supreme Court in ***State of Madhya Pradesh Vs. Sheetla Sahai And Ors.*** reported in ***(2009) 8 Supreme Court Cases 617***, in Paragraph 54 that an accused

also has right of fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of Constitution of India. Further, reliance has been placed on the judgment of Supreme Court in ***Pooja Pal Vs. Union of India and Ors.*** reported in **(2016) 3 SCC 135** in which it is reiterated that the guarantee under Article 21 of Constitution of India embraces both life and liberty of the accused as well as interest of the victim which includes fair investigation. It is submitted that case has been fairly investigated and further there is a counter case with respect to same incident, which has been registered as F.I.R. No.113/2019 for commission of offence under Section 324, 294, 506, 323, 34 of I.P.C. against the petitioner and others in which the public prosecutor has refrained to give any opinion in the same report in which he gave opinion in favour of the petitioners. It is also submitted that the petitioner has option to make a prayer before the trial Court for framing of charge under Section 307 of I.P.C. if there is material and substance present in the charge-sheet. Therefore, it is prayed that petition may be dismissed.

7. Heard learned counsel for both the parties and also perused the case diary of Crime No.112/2019 filed along with the petition.
8. After perusing the statement of witness that is present in the case diary and the opinion that has been given by the public prosecutor on the basis of which the further direction has been given by respondent No.3 to respondent No.5, it is found that there was need for additional investigation and respondent No.5 has not followed the instructions. It would not be appropriate for this Court to direct registration of offence in the case concerned, because it is within the jurisdiction and authority of the Investigating Officer to draw the conclusion as to what offence or offences are made out on the basis of materials collected in the investigation. The conclusion drawn by an Investigating Officer may be

correct or may not be correct. Even then, the persons aggrieved are not out of remedy, they can appear before the trial Court to assist the prosecution and make a prayer to the Court in that respect. This petition is disposed off at the motion stage with following directions:-

(a) Respondent No.5 is directed to follow the instructions of superior authority respondent No.3 and make additional investigation in the case in accordance with the directions given within the law permissible.

(b) Further the conclusion of registering offence shall be of respondent No.5 alone, without being influenced with the observations made in this order.

9. Consequently, the petition is disposed off with directions as aforesaid.

Sd/-
(Rajendra Chandra Singh Samant)
Judge