

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 676 of 2019

Keerti Kumar Sharma, S/o. Late Shri R.S. Sharma, Aged About 64 Yearsm,
R/o. Street No.8, New Shanti Nagar, Raipur, Chhattisgarh.

---- **Petitioner**

Versus

State Of Chhattisgarh, Through : The Officer In-Charge, Police Station Bhilai-
3, District Durg, Chhattisgarh.

-----**Respondent**

For Petitioner	: Mr. Vivek Chopada, Advocate
For Respondent/State	: Mr. Ghanshyam Patel, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

02/09/2019

Heard.

1. The instant petition under Article 226 of Constitution of India has been filed for issuance of appropriate direction for lodging of FIR against the accused persons.
2. The petitioner has sought for the following reliefs:-
 - (1) The Hon'ble Court may be pleased to issue writ/order/direction of appropriate nature, including a writ of mandamus, directing the respondent authority to register the FIR against the delinquents and carry out investigation in accordance with law.
 - (2) That the Hon'ble Court may be pleased to issue writ/order/direction of initiating action against the police authority, who have willfully flouted the directions of the Hon'ble Apex Court and also of this Hon'ble Court.

(3) Any other relief this Hon'ble Court may also be passed as this Hon'ble Court may deem fit in the facts of case.

3. It is submitted by the counsel for the petitioner that petitioner is the owner of 19 acres of agricultural land situated at Village – Ghugva, Tahsil – Patan, District Durg. It is submitted that one Vijay Sahu introduced the petitioner to Balkishan Sharma, Jayant Sharma, two sons of Jayant Sharm and Tikaram and they proposed and convinced the petitioner to carry out the development of the land and to take the said land on lease. It is further submitted that the said person obtained loan from the petitioner of Rs.10.00 lakhs for carrying out development over land. It is also submitted that they also proposed to install drip irrigation system over the agriculture land of the petitioner accordingly, the petitioner made an application for installation of drip irrigation system in his field. It is further submitted that, when the installation of drip irrigation system was not complete, then after lapse of considerable time, when the petitioner enquired, then he came to know that entire goods pertaining to drip irrigation system has been delivered on 27.09.2013 and the same has been received by the said persons by forging the signature of the petitioner over the delivery note. It is further submitted that the above said accused persons have also issued a cheques for repayment of loan, which was dishonored by the Bank stating that the account was in-operative. The petitioner made a complaint to the concerned police station, but till date no action has been taken. Hence, prayer is made for issuance of direction to the respondent/authorities to lodge FIR against the real culprits.
4. Learned counsel for the State/respondents opposes the submissions made and the grounds raised in the petition.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. On perusal of copy of the complaint filed by the petitioner, it appears that there is material in the complaint made by the petitioner, which needs investigation. Hon'ble the Supreme Court in the matter of **Lalita Kumari Vs. Government of Uttar Pradesh & Others, (2014) 2 SCC 1** 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.”

5. Therefore, the view is very clearly stated that the police official has bounden duty to lodge FIR, if the, complaint discloses commission of cognizable offence. It is held that the complaint filed by the petitioner has some substance which needs to be inquired. The respondent is directed that complaint filed by the petitioner before the police station be inquired in accordance with law laid down by the Hon'ble Supreme Court in the matter of **Lalita Kumar Vs. Government of U.P. & Ors.** (supra) and if any substance is found then FIR be lodged and the case be investigated.

7. Accordingly, the petition is disposed off with direction above mentioned.

Sd/-
(Rajendra Chandra Singh Samant)
Judge