

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1072 of 2017

Smt. Tarini Sharma, W/o. Shri Rajesh Sharma, Aged About 45 Years, R/o. Shri Rashtriya Goushala Vindhyawasini Ward, Dhamtari, At Present Shiv Chowk, Ramsagar Para, Dhamtari, Tahsil & District Dhamtari, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The District Magistrate, Dhamtari, District Dhamtari, Chhattisgarh
2. Bhisham Dubey, S/o. Late Ramkumar Dubey, Aged About 46 Years, R/o. Lal Baghicha, Khamhan Badi, Dhamtari, District Dhamtari, Chhattisgarh
3. Gulshan, S/o. Bhisham Dubey, Aged About 26 Years, R/o. Lal Baghicha, Khamhan Badi, Dhamtari, District Dhamtari, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Y.C.Sharma, Advocate
For State/Respondent	:	Mr. Vaibhav A Goverdhan, Panel Lawyer No.1
For Respondent No.2 & 3	:	Mr. Shiv Kumar Kaushik, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.01.2019

Heard

1. The present petition is against the order dated 09.06.2017 passed in Criminal Revision No.21/2017 by the Additional Sessions Judge, Dhamtari. The instant petition is by the complainant.
2. As per the case of the petitioner, an application under Section 156(3) of Cr.P.C. was filed against the respondents claiming that the offence under Section 294, 452, 506 of I.P.C. and Section 4, 5 of C.G. Tonhi Pratarna Nivaran Adhiniyam, 2005 has been committed accordingly crime be registered under those sections. After filing of complaint before J.M.F.C. investigation was ordered. The police after investigation came to a finding and stated that

after evaluating the statement of the witnesses, no offence is made out. When such report was filed, it was objected by the complainant and thereafter the Judicial Magistrate did not accept the closure report and directed for further enquiry and order for evaluate the case diary. It is contended that thereafter too the police has not evaluated the facts and evidence and only on the ground of statement of the witnesses of counter claim, it was again reported that no offence is made out. On the basis of such report the J.M.F.C. by it's order refused to register the case on the basis of fresh probe by police by it's order dated 09.01.2017. The said order when subject of revision, the revisional Court too dismissed the revision of petitioner by impugned order dated 09.07.2017. Hence, this petition.

3. It is stated that according to the order of the Judicial Magistrate dated 26.11.2015, the Court has directed for fresh enquiry, which necessarily means that the police is bound to take evidence and examine the case afresh. The trial Court thereafter by an order dated 09.01.2017 again concurred with the investigation of the police and stated that no offence is made out. It is contended that trial Court wrongly observed that the complaint made by the petitioner was by way of a counter blast to the report made against the husband of the petitioner.
4. Learned counsel for the petitioner would submit that despite the order of the Magistrate on the initial stage for fresh investigation, nothing was carried out which necessarily means that the order of the Court was not complied, however, when the fresh report was again filed without taking any further evidence, the Judicial Magistrate agreed with such investigation of the police and consented to it whereby the earlier order was reviewed, which

cannot be sustained and the revisional Court too also failed to its duty to discharge the jurisdiction vested in it.

5. Perused the documents filed along-with the petition and the record of the Court below. The order of the Judicial Magistrate dated 26.11.2015 is on record which shows that after the report of police that it had investigated the Crime bearing No.371/14 under Section 294, 452, 506 of I.P.C. and Section 4, 5 of C.G. Tonhi Pratarna Nivaran Adhiniyam, 2005 and found that no offence is made out and closure report was filed. The said closure report was objected by the complainant.
6. Learned Judicial Magistrate on the basis that it was objected by the complainant did not accept the closure and again directed for fresh investigation and ordered for evaluation of the case diary afresh. Subsequently, the order dated 09.01.2017 passed by the Judicial Magistrate would show the Judicial Magistrate concurred with the finding of the police which was filed again reiterating the earlier opinion. Further it was observed that the complaint was made predominantly on the basis of the counter blast to the offence registered against the husband of the complainant in Crime No.257/13 under Section 294, 323 & 506 of I.P.C. wherein the charge sheet was filed. In such order, statement of the independent witness were considered and eventually accepted the closure report. The said closure report was challenged in the revision, the revisional Court also by order dated 09.06.2017 concurred with the finding of the Judicial Magistrate.
7. At this stage, this Court in exercise of power under Section 482 of Cr.P.C. is not expected to hold the trial. The Judicial Magistrate by order dated 09.01.2017 evaluated the different facts and concurred with the finding of the police that no offence is made

out. If the petitioner is aggrieved with the closure report of the complaint made, the remedy to file the complaint is available to her under Section 200 of Cr.P.C. At this stage, evaluating and appreciating the entire evidence on either way may prejudice the right of the parties whether it is accused or victim and finding may be carried forward in furtherance thereto. Under the circumstances, I am not inclined to interfere with the order of the revisional Court dated 09.06.2017 whereby the order dated 09.01.2017 was upheld. The petitioner would be at liberty to file criminal complaint if so advised. It is further made clear that complaint if filed, the court below shall not be influenced by any finding of the court below earlier to it and may adjudicate the same on the basis of merit brought before it.

8. With such observation, the petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge