

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(CR.) No. 567 of 2018

Dr. A. B. Dave, S/o. B.B. Dave, Aged About 80 Years, R/o. Mukht Nagar, Tehsil and District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : The District Magistrate Durg.
2. Smt. Premalata Naiyar, W/o. H. K. Naiyar, Aged About 60 Years, R/o. House No.3 B, Street No. 38-D, Sector 5 Bhilai, Tehsil and District Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. K. Rohan, Advocate
For Respondents/State	: Mr. Adil Minhaj, G.A.
For Respondent No.2	: Mr. R.M. Solapurkar, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on board

03/09/2019

1. This petition under Article 226 of the Constitution of India has been brought for quashment of the criminal proceeding initiated against the petitioner.
2. It is submitted by the counsel for the petitioner that complaint case filed by respondent No.2 against the petitioner is without any substance. The trial Court has framed charge against the petitioner under Section 406 of the Indian Penal Code on 05.07.2018. This order framing charge was challenged by the petitioner before the Session Court by Criminal Revision No.152 of 2018 and the same has been dismissed. The dispute between the petitioner and the respondent No.2 is only to this extent that

the petitioner had sold a scooter to respondent No.2 and then borrowed it back for his own use. The petitioner has entitlement to possess the said scooter as he is registered owner of the same, therefore, no ingredients of Section 406 of I.P.C. are made out. Some reference has been made to the statement of the witnesses and it is prayed that the complaint case against the petitioner be quashed.

3. Counsel for the respondent No.1 has made formal objection for the reason that it is a case of private complaint.
4. Counsel for the respondent No.2 submits that both the Courts below have very clearly held that there is prima-facie case against the petitioner. The complaint case is pending since 1981 and the petitioner is unnecessarily trying to prolong the trial, therefore, the petition be dismissed at motion stage.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. On perusal of the documents filed along with the petition, it is found that there is evidence given by the complainant and other witnesses, that petitioner had sold his scooter to respondent No.2 and had received the price for the same. The scooter was then handed over to the respondent No.2, however, the petitioner made request to the respondent No.2 that till he makes purchase of new scooter, he wants to borrow the old scooter for 2-3 days. The request was accepted by the respondent No.2 and scooter

was handed back to the petitioner. Thereafter, the petitioner has never returned the scooter to respondent No.2 regarding which the petitioner needs to explain in trial against him. The grounds raised in the petition are that there had been a parallel agreement regarding purchase of car from the respondent No.2, which was not performed by the petitioner, therefore, he has been falsely implicated. Further the petitioner has also lodged one FIR against the respondent No.2 and her husband on the basis of which, they are being prosecuted that by itself can not be considered as sufficient ground to absolve him from allegation i.e. present in the complaint case. Further the prima-facie case for framing charge in the complaint case is made out or not has to be clearly considered on the basis of the evidence present for the same in the complaint case, any other grounds raised in such case can only be raised as defence in the trial itself. Therefore, after over all consideration of all the material present in the complaint case against the petitioner, I am of this view that no fault is found in framing charge against the petitioner for his trial in the complaint case and therefore, there is no ground to quash the proceeding of complaint case against the petitioner.

7. Accordingly, the petition has no merit and it is dismissed at the motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge