

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 983 of 2019

- Dr. Chandan Kumar Das S/o Late Shri Chitta Ranjan Das Aged About 60 Years R/o VB- 19/1, Railway Officers Colony, District- Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Superintendent Of Police, District Bilaspur Chhattisgarh.
3. Station House Officer, Police Station Tarbahar, District- Bilaspur Chhattisgarh.
4. Dr. C.N. Piprikar, Principal Chief Medical Director, South Eastern Central Railway, Zone Office, Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Mr. Sunil Otwani, Advocate.

For State/respondents : Mr. C.B. Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

01-10-2019

1. This writ petition has been brought under Article 226/227 of the Constitution of India praying for issuance of an appropriate writ.
2. It is submitted by learned counsel for the petitioner that the petitioner was posted as ACHD/CARDIOLOGIST/CH/BSP in Bilaspur by order dated 27.04.2017. He had completed only two years of service when the respondent No.4 passed an order on 03.06.2019 mentioning that officers working in sensitive post for more than four years in SECR zone are being transferred and the name of this applicant finds mention in the

order so he is transferred to Raipur. This was a deliberate false statement made in the order dated 03.06.2019 which is filed at page 10 of the petition. The petitioner approached the Central Administrative Tribunal, Jabalpur by which he has been granted interim relief.

3. The petitioner has filed a complaint before respondent No.3 in registering offence against respondent No.4 on 09.09.2019 but the petitioner has been provided with notice under Section 155 of Cr.P.C. that no offence is made out and he has been advised to approach the Court having jurisdiction.
4. Relying on the judgment of Supreme Court in ***Lalita Kumari Vs. State of Uttar Pradesh And Others***, reported in ***(2014) 2 SCC 1***, it is submitted that offence under Section 167 of Cr.P.C. is made out. Therefore, the respondent No.2 and 3 be directed to lodge F.I.R. in this case.
5. Learned counsel for the State opposes the petition and submissions made in this respect. It is submitted that the complaint made by the petitioner is a departmental matter which can be dealt departmentally. As the respondent No.3 has inquired and issued notice under Section 155 of Cr.P.C., therefore, the petitioner had option to approach Criminal Court by filing a private complaint. Placing Reliance on the judgment of ***Sakiri Vasu Vs. State of U.P. And Others*** reported in ***(2008) 2 SCC 409***, it is submitted that petitioner has option to file application under Section 156(3) before the Magistrate or filing a private complaint under Section 200 Cr.P.C., therefore, the petition is not maintainable.
6. Heard learned counsel for both the parties and perused the documents.
7. According to the schedule of Cr.P.C., this offence is a cognizable offence. Section 155 of Cr.P.C. is produced as under:-

155. Information as to non-cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

On perusal of Section 155 Cr.P.C., it is clear that an Officer in Charge of a Police Station has been restricted to investigate the non-cognizable offence without the order of a Magistrate having power to try such case. This provision does not authorize the Police Officer to report and issue notice under Section 155 of Cr.P.C. in any other case which is a cognizable offence. Therefore, the issuance of notice under Section 155 of Cr.P.C. of respondent No.3 is totally uncalled for and without the authority of the law given under Section 155 of Cr.P.C.

8. The offence under Section 167 of I.P.C. is reproduced as under:-

167. Public servant framing an incorrect document with intent to cause injury.—

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. On reading the provision under section 167 Cr.P.C., it is found that simply an erroneous statement in any document by itself would not be an offence unless making such erroneous statement is associated with such beliefs that the statement is incorrect and there is intention to cause injury to any person which are the other circumstances which can be established only in an inquiry. Therefore, the respondent No.3 had the duty to inquire into the matter and find out whether the case is made out against respondent No.4 for registration of cognizable offence against him.
10. Directions of Supreme Court in ***Sakiri Vasu Vs. State of U.P. And Others (Supra)*** are in place however there is also direction of Supreme Court in ***Lalita Kumari Vs. Government of Uttar Pradesh & Others*** (supra) passed a judgment of five Judge Bench of Supreme Court.

“**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.

In view of the direction of Supreme Court in ***Lalita Kumari Vs. Government of Uttar Pradesh*** as aforementioned, I feel inclined to dispose off this petition at the motion stage. The issuance of notice by respondent No.3 under Section 155 of Cr.P.C. is quashed and respondent No.2 and 3 are directed to make an inquiry into the complaint filed by the petitioner in accordance with law and if any substance is found regarding commission of cognizable offence then, further action may be taken in accordance with law.

6. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika