

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(Cr.) No. 1004 of 2019

- Girish Dubey, S/o Late Shri Bhagirathi Dubey, Aged About 54 Years, R/o 28, P and T Colony, Rohinipuram, Raipur, District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Home (Police) Department, Atal Nagar, Mantralaya, New Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Director General of Police , Police Headquarter, Atal Nagar, New Raipur, District Raipur Chhattisgarh.
3. The Superintendent of Police , Raipur, District Raipur Chhattisgarh.
4. The Inspector General of Police, Raipur, District Raipur Chhattisgarh.
5. The Station House Officer, Police Station, D. D. Nagar, Raipur, District - Raipur Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Anish Tiwari, Advocate.
For State/respondents	: Mr. Roshan Dubey, PL

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

03-10-2019

Heard on admission.

1. This petition has been brought under Article 226 of the Constitution of India praying for issuance of appropriate writ and directions.
2. Learned counsel for the petitioner submitted that late Bhagirathi Dubey was father of this petitioner and because of his serious illness, he was admitted in Suyash Hospital, Kota, Raipur from 13.03.2019, till the date he died i.e. on 20.08.2019. During this period, late Bhagirathi Dubey was not in a condition to make any decision or to execute any sale deed. In-spite of that, there is one registration of sale deed by late

Bhagirathi Dubey. The date of the said sale deed was 26.03.2019. The authority of the hospital has given a certificate that the father of petitioner Bhagirathi Dubey was not in a condition to execute any sale deed. The complaint was filed to the SHO/Respondent No.5 alleging fraudulent execution of sale deed and alleging other offences, but, no action has been taken by Respondent No.5, till date. Therefore, prayed that petition be admitted.

3. Learned counsel appearing for respondents opposes the petition and submits that the case may be under investigation or inquiry.
4. Heard learned counsel for both the parties and perused the documents.
5. On perusal of copy of the complaint filed by the petitioner and other documents filed along with the petition, it appears that there is material in the complaint made by the petitioner in the case, 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."*

6. in view of the as aforesaid, I feel inclined to allow this petition. Hence, this petition is disposed off at the motion stage with the following direction:-

(a) The respondent No.3 is directed to make an inquiry of the complaint filed by the petitioner and, if, any substance is found, in that case, respondent No.3 may register the FIR and investigate the case.

7. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge