

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 27.11.2019****Order Delivered on 11/12/2019****WA No. 551 of 2019**

(Arising out of order dated 23.9.2019 passed by learned Single Judge
in WPCR No.745/2019)

1. Smt. Kamla Devi Jain, W/o Parasmal Jain, aged 60 years, R/o Shankar Nagar, Near Water Tank, Raipur, District Raipur (CG)
2. Smt. Mamta Devi Bhansali, W/o Shri Mukesh Bhansali, Aged 48 Years, R/o Baijnathpara Ward, Raipur, District Raipur (CG)
3. Smt. Neeta Bhansali, W/o Shri Rajkumar Bhansali, Aged 44 Years R/o Baijnathpara Ward, Raipur, District Raipur (CG)

---- Appellants**Versus**

1. State of Chhattisgarh, Through Secretary, Ministry Home (Police), Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, Atal Nagar, District Raipur, Chhattisgarh
2. Director General of Police Chhattisgarh Police Headquarters, Raipur (Chhattisgarh).
3. Superintendent of Police, Raipur, District Raipur, Chhattisgarh.
4. Station House Officer, Police Station Civil Lines, Raipur, Chhattisgarh.
5. Praveen Kumar Katela, S/o Shri B.K. Katela, aged about 46 years, R/o Civil Lines, Katela Bhawan, Raipur, District Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Ashish Surana, Advocate
For Respondent No.1 to 4	:	Shri G. Patel, Government Advocate
For Respondent No.5	:	Shri Anup Mazumdar, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu

CAV Order**Per Parth Prateem Sahu, J.**

1. Issuance of direction by the learned Single Judge in WP (Cr)
No.745/2019 for reconstruction of case diary of Crime

No.197/2010 and submission of final report before a Court having jurisdiction after complying with the direction issued by the Inspector General of Police, Raipur regarding conduction of additional investigation by a Senior Police Officer on the subject-matter, is under challenge in this writ appeal.

2. Brief facts of the case are that on 4.5.2010 respondent No.5 herein submitted a complaint with respondent No.4 for registering offence under Sections 420, 467, 468, 471, 34 of the IPC against appellants herein. In the said complaint respondent No.5 has alleged some interpolation on the part of appellants herein in the revenue records as well as sale deed dated 15.1.1992 with regard to area of land. Being dissatisfied with the progress of investigation, respondent No.5 moved this Court by filing a writ petition bearing WP(Cr) No.2072/2011 in which the respondent State authorities submitted that the investigation has been done; closure report has been prepared and a copy whereof has been submitted in the office of the Advocate General, Bilaspur to make it part of their submissions before the writ Court in WP(Cr) No.2027/11. When the petitioner/ respondent No.5 herein did not gather any information with regard to submission of closure report before the competent Court for quite long time, he filed writ petition bearing WP (Cr) No.745/19 praying for following reliefs:-

“10.1. That This Hon'ble Court may kindly be pleased to call for the case diary in relation to FIR number 197 date 04/05/2010 registered by respondent number 4.

10.2. That This Hon'ble Court may kindly be pleased to direct the respondent authority to conduct fair and transparent investigation upon the FIR lodged by the petitioner by some responsible officer within limited time frame as per the provisions of Section 173 of the code of criminal Procedure.

10.3. That This Hon'ble Court may kindly be pleased to direct the respondent no.3 to take steps to arrest the respondent no.5 to 7 with regard to the FIR no.197/2010 in accordance with law."

3. The learned Single Judge after considering the pleadings and documents placed on record, disposed off the said writ petition with following direction:-

"5. After considering on the submissions made by the counsel appearing for the parties, I feel inclined to dispose of the petition with following direction. The case diary of Crime No.197 of 2010 be reconstituted by the respondent No.4 and after making compliance with the direction of the Inspector General of Police, Raipur dated 14.08.2013, regarding making of additional investigation by senior police officer, final report be submitted before the Court having jurisdiction as soon as possible preferably within a period of three months."

4. Shri Ashish Surana, learned counsel representing respondents No.5 to 7/ appellant herein submits that the impugned order has been passed by the learned Single Judge without issuing notice to the respondents therein. The complaint was lodged on 4.5.2010 and closure report has been filed by the concerned Police Station in the year 2011 and once closure report is submitted, there cannot be any direction for resubmission of final report under the provisions of Section 178 of CrPC. He also submits that direction to again submit final report would amount to reinvestigation in the matter, which is not permissible, except as per provisions of Section 173 (8) of CrPC wherein only 'further

investigation' is provided.

5. Per contra, Shri Anup Mazumdar, learned counsel appearing on behalf of respondent No.5 submits that respondent No.5 made complaint in the year 2008 based on which FIR under Crime No.197/2010 was registered, but even after lapse of more than nine years the investigation could not be completed. He submits that although WP(Cr) No.2072/2011 was dismissed on the basis of submission made by learned State Counsel that investigation has been completed and closure report is to be filed, one of the reliefs claimed in the said writ petition by respondent No.5 was for handing over investigation of Crime No.197/10 to the Central Bureau of Investigation (CBI). It is also pointed out that vide letter dated 14.8.2013 the office of the Inspector General of Police, Raipur called upon the Superintendent of Police, Raipur to submit report on six supplementary issues as mentioned therein, but instead of complying with the said direction, the concerned police official informed that the case diary of Crime No.197/10 is missing.
6. Shri Patel, learned Government Advocate representing the State submits that earlier the case diary was missing and therefore investigation could not be completed and however, the direction now issued by the learned Single Judge in WP(Cr) No.745/19 will be complied with.
7. We have heard learned counsel for the parties and perused the records.

8. Looking to the pleadings made in writ petition as well as turn of events recorded by learned Single Judge, it appears that the learned Single Judge found that the Inspector General of Police vide letter Annexure P-4, dated 14.8.2013 directed for further investigation in Crime No.197/10 registered by the police, but thereafter the case diary went missing. Learned Single Judge also taken note of the contents of document Annexure P-11 dated 26.7.2019, which the petitioner/ respondent No.5 received under the Right to Information Act, 2005, wherein it has been mentioned that Closure Report of Crime No.197/10 submitted in the office of the Advocate General, Bilaspur on 29.1.2012 is required for further action, therefore, the same be supplied back.
9. From perusal of the observation made by learned Single Judge in the impugned order and also documents annexed along with writ petition, it appears that Closure Report bearing No.42/11 dated 23.4.2011 said to be prepared and submitted before the competent Court at Raipur on 16.8.2011, has been taken back from the Court by one Sub Inspector R.N. Pandey for its production in the office of Advocate General and thereafter it went missing. Meaning thereby, Closure Report has neither been taken into cognizance by the competent Court and nor could any order be passed thereon because the same has been withdrawn from the Court of learned Chief Judicial Magistrate, Raipur, as mentioned in letter dated 26.7.2019 (Annexure P-11). When once final report submitted before the Court of competent jurisdiction is taken back before any order could be passed on it by the Court

having jurisdiction, it cannot be said that since the investigating agency has submitted final report after completion of investigation, no direction to again submit final report can be issued. On making any complaint before the police station alleging commission of cognizable offence, it is to be registered, investigated and on completion of investigation, final report is required to be filed before the Court having jurisdiction for appropriate orders. It is for the Court to accept or not to accept closure report by passing appropriate orders. In this case, Crime No.197/2010 has not reached to its logical end in terms of Section 173 of CrPC.

10. Ground raised by learned counsel for the appellants that the direction issued by the learned Single Judge vide impugned order would amount to reinvestigation, which cannot be permitted, is not sustainable for the reason and discussions made above.
11. The provisions of Section 173 (8) of CrPC envisages 'further investigation' and not a 'fresh investigation' or 're-investigation'. Taking into consideration the overall facts and circumstances of the case, particularly the fact that the investigation in respect of crime bearing No.197/10 registered in the year 2010 has not reached to its logical end with an order of the Court of competent jurisdiction till date, and further looking to the fact that case diary itself went missing for the last about 7 years, in the opinion of this Court, the learned Single Judge has not committed any error in issuing direction for reconstruction of case diary of Crime

No.197/10 and to make additional investigation on the issues as pointed by the Inspector General of Police, Raipur vide letter dated 14.8.2013.

12. The writ appeal fails. It is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/