

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 99 of 2020

- Dayanand Rawani S/o Shri B.R. Rawani, Aged About 49 Years, Occupation - Service (Lecturer) District Education and Training Institute (DIET) Jashpur R/o Behind Collectorate, Jashpur, District - Jashpur Chhattisgarh. (Accused), District : Jashpur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through District - Magistrate Raigarh, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
2. Superintendent of Police, Raigarh District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
3. Station House Officer Dharamjaigarh, District - Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh ...(Respondents)
4. Sunder Sai Rathiya S/o Late Shri Sukhdev Singh Rathiya, Aged About 72 Years, R/o Village - Kodwaripara, Post and Tehsil - Dharamjaigarh, District - Raigarh Chhattisgarh. **(Applicant)**, District : Raigarh, Chhattisgarh

----Respondents

For Petitioner – Shri Surfaraj Khan, Advocate.

For State/Respondents No.1 to 3 – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12-02-2020

1. This petition has been brought challenging the entire proceeding pending before the Court of JMFC Dharmjaigarh as Criminal Case No.451/2011 (State of Chhattisgarh Vs. Dayanand Rawani) praying for issuance of writ of certiorary.

2. It is submitted that while entertaining the application filed by respondent No.4 filed under Section 156(3) of the Cr.P.C. and passing orders for initiation of trial against the applicant/defendant disregard has been made to the provisions of law and also the legal principles present. The application that was filed by the respondent No.4 on 04-02-2008 before the Court below under Section 156(3) of the Cr.P.C. was neither signed by respondent No.4 nor by his counsel, even then the application was entertained, but the same was

dismissed by the order dated 20-02-2008. The order dated 20-02-2008 was challenged in revision before the Court of Sessions Judge in Criminal Revision No.20/2008 which was decided on 24-03-2009. The applicant had appeared on summons in that revision petition, the revision was allowed and the order dated 20-02-2008 was set aside, but a direction was also given to the applicant to remain present before the trial Court on 02-04-2009, which was contrary to law for the reason that there is no requirement for any person accused in complaint or application under Section 156(3) of the Cr.P.C. to be present before a Court before cognizance is taken and before process is issued against him. Therefore, these are serious discrepancies which can be observed. In the subsequent proceeding the learned trial Court has ordered the concerned police station for registration of the FIR against the petitioner, thereafter the case was investigated and the charge sheet was fled against the petitioner and the petitioner is now being prosecuted in the same case.

3. It is submitted that grave negligence has been committed by the trial Court by proceeding on the application filed by the respondent No.4 which was not at all signed and also not supported with affidavit. Therefore, it was a total disregard to the principle that has been laid down by Hon'ble the Supreme Court in the matter of **Priyanka Srivastava and another Vs. State of Uttar Pradesh and others**, (2015) 6 SCC 287 in which it was made a precondition that an application under Section 156(3) should be supported with an affidavit. Hence, these are serious discrepancy present in the proceeding that are initiated against the petitioner and the whole proceeding against the petitioner is liable to be quashed.

4. Learned State counsel on behalf of the respondents 1 and 3 opposes the submission made by the learned counsel for the petitioner and submits that there may be some discrepancy present at the time of initiation of proceeding against the petitioner, however, the absence of signature on the application

stands ratified by the act of respondent No.4 itself who presented revision against the order dated 20-02-2008. The order of the revisional Court directing the petitioner to present himself before the trial Court is mere irregularity and not illegality. Subsequent to that, the order was passed by the Court lodging the FIR. The FIR was lodged and the charge sheet was filed in the year 2011. It is submitted that after passing of more than 8 years the petitioner has come before this Court to challenge the proceeding which itself shows that the petitioner was not vigilant and the delay on his part for bringing this petition under Article 227 of the Constitution of India is with intention to hamper the proceeding of the trial going on against the petitioner. The petitioner is required to explain the delay and there is no explanation of the delay. Therefore, the petition is not liable to be admitted and it should be dismissed at the motion stage.

5. In reply it is submitted by learned counsel for the petitioner that the trial itself against this petitioner is delayed and till date charges have not been framed against him. In fact, a complaint without any signature should not be deemed as a complaint at all, therefore, on this complaint the proceeding initiated is illegal proceeding. Therefore, this illegality committed by the Court below and hence, interference of this Court is required.

6. Heard learned counsel for the parties and perused the documents.

7. It is not disputed and denied that the application filed by respondent No.4 on 04-02-2008 was not signed by respondent No.4 or by his counsel. It is the application which was filed before the JMFC, therefore, it was not an information given under Section 154 of the Cr.P.C. in which there is requirement that the person giving information has to sign the information noted down in the book of FIR. The provision under Section 156(3) of the Cr.P.C. simply speaks that a Magistrate who is empowered under Section 190 Cr.P.C. may order such investigation as mentioned above. This provision does

not lay down any procedure, it is a provision only empowering a Magistrate to order investigation in cases where he is empowered to take cognizance of the same under Section 190 of the Cr.P.C. It is to be noted that the application was filed by respondent No.4 on 04-02-2008 and on that date there was no procedure prescribed or guidelines laid down by any judicial precedent. The judgment in case of **Priyanka Shrivastava and another Vs. State of U.P. and others** (supra) has been delivered by Hon'ble the Supreme Court on 19-03-2015, therefore, it cannot be imagined that the trial Court has committed any error in not complying with the principle laid down and the direction issued by Hon'ble the Supreme Court.

8. The only consideration which is needed at present is this whether the absence of signature of respondent No.4 on the application filed amounts to irregularity and illegality which vitiates the proceeding.

9. Section 461 of the Cr.P.C. provides irregularities which vitiates proceedings, which is as under:-

461. Irregularities which vitiate proceedings. – If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely: –

- (a) attaches and sells property under section 83;
 - (b) issues a search- warrant for a document, parcel or other thing in the custody of a postal or telegraph authority;
 - (c) demands security to keep the peace;
 - (d) demands security for good behaviour;
 - (e) discharges a person lawfully bound to be of good behaviour;
 - (f) cancels a bond to keep the peace;
 - (g) makes an order for maintenance;
 - (h) makes an order under section 133 as to a local nuisance;
 - (i) prohibits, under section 143, the repetition or continuance of a public nuisance;
 - (j) makes an order under Part C or Part D of Chapter X;
 - (k) takes cognizance of an offence under clause (c) of sub- section (1) of section 190;
 - (l) tries an offender;
 - (m) tries an offender summarily;
 - (n) passes a sentence, under section 325, on proceedings recorded by another Magistrate;
 - (o) decides an appeal;
 - (p) calls, under section 397, for proceedings; or
 - (q) revises an order passed under section 446,
- his proceedings shall be void.

10. The only provision which needs consideration under Section 461 is clause (k), according to which if any Magistrate not being empowered by law in this behalf takes cognizance of offence under clause (c) of sub-section (1) of section 190. According to Section 190(1)(c) of the Cr.P.C., any Magistrate of first class or any Magistrate of second class especially empowered in this behalf can take cognizance of offence upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11. The presiding officer of the Court concerned had been JMFC, therefore, there appears to be no question on his authority to take cognizance of this offence. Therefore, in this particular case, the discrepancies that have been pointed out appear to be mere irregularities and such irregularities not being of the kind mentioned under Section 461 of the Cr.P.C., cannot be regarded as fatal to the prosecution that has been initiated against the petitioner. Apart from that, the petition has been brought after substantial delay and facing the trial for almost nine years. As held in the matter of **State of Madhya Pradesh Vs. Nandlal Jaiswal**, AIR 1987 251 by Hon'ble the Supreme Court such delay is fatal. There may be reasons why the trial against the petitioner has not commenced so far, but that need not be gone into. After over all consideration, I am of this view that the present petition is not fit to be admitted, therefore, it is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge