

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P. No. 525 of 2020**

Satish Puri, S/o Rameshwar Puri, Aged about 54 years, Proprietor, Puri, I.T.I. Kurud Road, Kohka, Bhilai, Tahsil and District Durg, Chhattisgarh.

---Petitioner/Complainant

Versus

1. Smt. Anupama Goswami, W/o Sharda Giri Goswami, Aged about 41 years, R/o Street No. 15-A, Pragati Nagar, Risali, Bhilai, Tahsil and District Durg, Chhattisgarh.

--- Accused

2. State of Chhattisgarh, Through District Magistrate, Durg, District Durg, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. T.K. Jha, Advocate
For State	:-	Mr. H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/03/2020

1. This petition under Section 482 of the Cr.P.C. is directed against the impugned order dated 06/01/2020 by which learned Sessions Judge set aside the order dated 23/09/2019 passed by the trial Magistrate taking cognizance of offence under Section 420 of the IPC against respondent No. 1 herein.

2. Mr. T.K. Jha, learned counsel for the petitioner would submit that the revisional Court is absolutely unjustified in setting aside the order of the trial Magistrate by holding that the trial Magistrate could not have taken cognizance of offence against respondent No. 1 by recording a finding which is perverse and contrary to the record.

3. Per contra, Mr. H.S. Ahluwalia, learned deputy Advocate General would submit that the trial Magistrate had taken cognizance of offence against respondent No. 1 on the basis of the document filed by the petitioner/complainant which cannot be considered while taking cognizance of.

4. I have heard learned counsel for the parties at length and considered their rival submissions made herein-above.

5. The Supreme Court, in the matter of **Sunil Bharti Mittal v. Central Bureau of Investigation**¹, has held as under :-

"49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore,

¹ (2015) 4 SCC 609

cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see *SWIL Ltd. v. State of Delhi*²). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see *Union of India v. Prakash P. Hinduja*³). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer."

6. A careful perusal of the aforesaid decision rendered by the Supreme Court in **Sunil Bharti Mittal** (supra) would show that at the stage of taking cognizance under Section 190(c) of the Cr.P.C., it is not permissible for the Magistrate

2 (2001) 6 SCC 670 : 2001 SCC (Cri) 1205

3 (2003) 6 SCC 195 : 2003 SCC (Cri) 1314

to consider any material other than that collected by the investigating officer.

7. In the instant case, as recorded by the trial Magistrate himself in the order impugned, he has considered the document submitted by the petitioner/accused at the stage of taking cognizance, which runs contrary to the principles of law laid down by their Lordships of the Supreme Court in the matter of Sunil Bharti Mittal (supra). In that view of the matter, learned revisional Court is absolutely justified in setting aside the order of the trial Magistrate taking cognizance of offence under Section 420 of the IPC against respondent No. 1.

8. The present petition, being devoid of merits, deserves to be and is accordingly dismissed. However, petitioner/complainant is at liberty to proceed in accordance with law at the appropriate stage.

Sd/-
(Sanjay K. Agrawal)
Judge