

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 392 of 2019**

*{Arising out of order dated 18.02.2019 passed by the learned Single Judge in
WP(CR) No. 90 of 2019}*

- Shailendra Singh Bais S/o Late Shri Natthu Singh Bais Aged About 52 Years R/o K. Naryanapura, Hennur, Bangalore, Karnataka

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Home Affairs, Mantralya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh. (Respondent / Respondent No. 1)
2. Superintendent of Police, Office of Superintendent of Police, Durg Chhattisgarh. (Respondent / Respondent No.2)
3. Nitish Chandrakar S/o Shri Narayan Chandrakar, R/o Aadarsh Nagar, Durg Chhattisgarh. (Respondent / Respondent No. 4)
4. Smt. Savita Thakur W/o Shri Dharmendra Kumar Thakur R/o M I G C - 456, Padmanabhpur, Durg Chhattisgarh. (Respondent / Respondent No.5), District : Durg, Chhattisgarh
5. Shri Dharmendra Kumar Thakur S/o Late Mohan Singh Thakur , R/o M I G C - 456, Padmanabhpur, Durg Chhattisgarh. (Respondent / Respondent No.6)
6. Estate Manager, Chhattisgarh Housing Board, Division Durg, Padmanabhpur, Durg Chhattisgarh. (Respondent / Respondent No. 7)
7. Shri Ramesh Tiwari, Notary, District Court, Durg Chhattisgarh. (Respondent / Respondent No.8)
8. Smt. Ganga Devi Bais W/o Late Natthu Singh Bais Aged About 70 Years R/o 147, In Front of Garden, Shikshak Nagar, Durg, Tahsil And District Durg Chhattisgarh. (Petitioner)

---- Respondents

For Appellant	: Shri Sunil Otwani, Advocate.
For Respondents No. 1 & 2/State	: Shri Siddharth Dubey, Deputy Government Advocate.
For Respondent No.6	: Shri Sanjay Patel, Advocate.
For Respondent No.7	: Shri P.R. Patankar, Advocate.
For respective Respondent.	: Shri Prasoon Agrawal, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

04.03.2020

1. The challenge is against the judgment dated 18.02.2019 passed by the learned Single Judge in WP(CR) No. 90 of 2019, whereby FIR was directed to be registered in terms of the verdict passed by the Apex court in ***Lalita Kumari vs. Government of Uttar Pradesh and Others*** reported in ***(2014) 2 SCC 1***. The operative portion of the said judgment as given in paragraph 2 reads as follows:

“Perused the report Annexure P-2. Prima facie, it appears that the cognizable offence was reported against the respondent No.3. Therefore, without any observation on merit, taking into the nature of the complaint, it is directed that since the cognizable offence is reported, the concerned S.H.O. shall register the FIR and complete the investigation within a reasonable time as per the law laid down in case of ***Lalita Kumari v. Government of Uttar Pradesh and Others (2014) 2 SCC 1.***”

2. The main contention raised by the Appellant is that there can not be any automatic registration of the FIR and various requirements have to be complied with, as mentioned in paragraph 120 of the ***Lalita Kumari's case*** (supra). The thrust of the submission is also with reference to the right of the party to be heard before passing any direction to cause the FIR to be registered.
3. Whether the proposed accused has got a right to be heard before a direction is given for registration of FIR, invoking the jurisdiction under Article 226 of the Constitution of India, was a subject matter for consideration, as referred to a Full Bench of this Court, in WP(CR) No.

121 of 2017. As per judgment dated 30.01.2020 in the said case, the reference has been answered by the Full Bench to the effect that no such right is vested so as to have an opportunity before registration of the crime. This being the position, it stands against the Appellant herein. The direction given by this Court with regard to the registration of the crime, with reference to the law declared by the Supreme Court, was also the subject matter of consideration before this Court in WA No. 292 of 2019. The learned counsel for the Appellant submits that the matter might be disposed off in terms of the observation in 'paragraph 9' of the said judgment which is extracted below:

“9. With regard to the challenge raised, we are of the view that the observation made by the learned Single judge in 'paragraph 3', insofar as a finding was rendered to the effect that *prima facie* reading of Annexure P/1 and P/2 would reveal that a cognizable offence was made out, it the objectionable part. It could have been by way of a direction to the Police/investigating agency to look into the facts and figures and to take appropriate steps in conformity with the law laid down by the Supreme Court in Lalita Kumari (supra) case, without expressing any opinion. We find some force in the said submission. In the said circumstances, we make it clear that the said observation by itself will not be of any consequence and the further proceedings will depend upon the outcome of the investigation to be done by the Police. With the above observation, the appeal stands disposed off.”

4. Heard both the sides, we do not find anything wrong with the course suggested by the learned counsel for Appellant. The appeal stands disposed of in terms of judgment dated 06.08.2019 passed in WA No. 292 of 2019.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge