

NAFRHIGH COURT OF CHHATTISGARH, BILASPURReserved on 09.07.2021Pronounced on 06.08.2021CRMP No. 504 of 2016

- Balraj Naidu S/o Hanumat Rao Naidu Aged About 36 Years R/o Village - Pithora, Police Station - Pithora Tahsil - Pithora, District - Mahasamund Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through - Police Station Pithora, Revenue And Police District - Mahasamund, Civil District Mahasamund, District - Mahasamund Chhattisgarh
2. K. D. Vaisnav S/o Late Ishwar Das Vaisnav Retired - Sub - Divisional Officer R/o Sector - 1, Professor Colony Raipur, Police - Station - Dindayal Upadhyay Nagar, District - Raipur Chhattisgarh
3. Tahsildar Pithora Police Station - Pithora Tahsil - Pithora, District - Mahasamund Chhattisgarh

---- Respondents

For Petitioner : Shri A.K. Yadav, Advocate
 For State : Shri Devendra Pratap Singh, Dy. Advocate General
 For Respondent No.2 : Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice Narendra Kumar VyasC.A.V. ORDER

1. The petitioner has filed present Cr.M.P. under Section 482 Cr.P.C. for quashing of charge-sheet bearing registration No. 56/2015 registered at Police Station – Pithora, District – Mahasamund for the offence punishable under Sections 420, 467, 468 and 471 of IPC as well as criminal case No. 317/2015 pending before the Judicial Magistrate First Class, Pithora District – Mahasamund.
2. The brief facts, as projected by the petitioner are that petitioner is a Right to Information activist. He has made complaint against the Patwari and the Data Entry Operator of Tahsil- Pithora before the Tahsildar and Sub-Divisional Officer (R) on 21.07.2014 regarding irregularity and corruption committed by them in uploading the

government land as a private land in Tahsil's record. He also made a complaint on 02.01.2015 before the District Collector, Mahasamund regarding the land situated at village – Rajasevaiya, Patwari Halka No. 10/4, Tahsil- Pithora, Khasra No. 8 and area 1.74 Ha. which is actually government land recorded as grass land according to Missal record provided by earlier Patwari on 14.06.2012. Now, the same land is recorded in the name of Ramnarayan S/o Rati Ram Teli as Bhumiswami land. The Patwari Bainjamin Sikka, Karan Chandrakar, Gopal Pradhan and the Data Entry Operator have manipulated the revenue /official record and thus caused loss to the government.

3. The Collector examined the matter and initiated action against them. The collector, Mahasamund directed the Sub-Divisional Officer (R) to inquire and lodge criminal case against the employees who are found guilty of manipulating revenue records. On 08.01.2015, the Sub-Divisional Officer (R) registered case and started inquiry. The Sub-Divisional Officer (R) recorded statements of Patwari Bainjamin Sikka, Karan Chandraker, Gopal Pradhan and the Data Entry Operator. In their statements, they stated against the petitioner. The Sub-Divisional Officer (R) prepared inquiry report and directed the police of Police Station Pithora to register FIR against the petitioner. On the basis of the direction, FIR was lodged against the petitioner on 01.04.2015 as Crime No. 56/2015 for the offence punishable under Sections 420, 467, 468 and 471 IPC. The petitioner was arrested on 02.04.2015, thereafter, released on bail on 22.04.2015 by the Sessions Judge, Pithora.
4. Further contention of the petitioner is that he had lodged complaint against those persons but he has been robed in the offence. The action taken by the respondents is erroneous. This is complete abuse of process of law. After registration of FIR, final report has already been submitted. On the basis of factual matrix of the case registration of FIR and subsequent submission of final report are *ab-intitio* illegal and same are liable to be quashed.
5. Learned State counsel as well as learned counsel for respondent No. 2 have filed their reply.
6. Learned counsel for respondent No. 2 would submit that the trial is going on and statements of some of the witnesses have already been

recorded, therefore, at this stage quashing of charge-sheet will not serve any fruitful purpose. He would further submit that there is sufficient material collected during the investigation to reach to a conclusion that the petitioner has committed offence enumerated in the FIR. He would rely upon the Judgment of Hon'ble Supreme Court in case of *Prakash Singh Badal vs. State of Punjab*¹ as well as *State of A.P. vs Golokonda*² wherein Hon'ble Supreme Court has held that the allegations of *mala fides* against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

7. I have learned counsel for the parties, perused the documents appended with the petition with utmost satisfaction.
8. Learned counsel for the petitioner would submit that the Sub-Divisional Officer (R) on 13.03.2015 has recorded a finding that the Data Entry Operator Bhupendra Pradhan has stated in his statement that petitioner used to come to the office. They were thinking that petitioner was Patwari as he was sitting in front of the computer room which relates to recoding of land records, therefore, they never objected him. He collected records of village Rajasevaiyakhurd from the computer. Learned counsel for the petitioner would submit that this finding is perverse and contrary to the evidence which cannot be accepted. He also highlighted the findings recorded in the inquiry report to establish that he has been falsely implicated in the complaint. He has also referred to some maps to substantiate that entry in the records have been deliberately manipulated.
9. From the entire pleadings, materials placed on record, submissions made by learned counsel for the petitioner, it is clear that petitioner is mainly raising objection about the correctness of the report dated 13.03.2015.
10. The correctness and genuineness of the order dated 13.03.2015 cannot be tested by this Court in petition under 482 Cr.P.C. It is a matter of evidence which can be done only by the trial Court while recording of the evidence. This Court while hearing the petition under Section 482 Cr.P.C. cannot examine the reliability or genuineness of

¹ AIR 2007 SC 1274

² AIR 2004 SC 3967

the statements or allegations made in the FIR. The learned counsel for petitioner has referred to statements recorded during inquiry to substantiate his contention that he has been falsely roped in the offences mentioned in FIR. The same is again matter of finding of facts and cannot be ascertained by this Court while hearing petition under Section 482 Cr.P.C. These facts can be examined only by trial Court at the time of recording of evidence.

11. Hon'ble the Supreme Court in **State of A.P. Vs. Golconda Linga Swamy & another**³, held as under:-

“10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in *R.P. Kapoor and Bhajan Lal cases* (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval.”

³ (2004) 6 SCC 522

12. Hon'ble the Supreme Court in *Rajiv Thapar & others Vs. Madan Lal Kapoor*⁴, held as under:-

“28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

13. Hon'ble the Supreme Court in *State of Telangana Vs. Habib Abdullah Jeelani & others*⁵, held as under:-

15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in *Kurukshetra University* case compels us to observe that we are also surprised by the impugned order.”

14. Hon'ble the Supreme Court in *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others*⁶, held as under, relevant paragraphs are reproduced below:-

“iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context

⁴ (2013) 3 SCC 330

⁵ (2017) 2 SCC 779

⁶ AIR 2021 SC 1918

of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;"

15. From the perusal of the above discussions and considering the materials placed on record, I am of the view that correctness of the facts and truthfulness of the materials collected during the investigation are the facts which can be examined by the trial Court by conducting thread bearing inquiry. There are disputed facts involved in the present case which cannot be looked into by this Court.

16. Accordingly, the present Criminal Miscellaneous Petition is liable to be and is hereby dismissed. However, it is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present Criminal

Miscellaneous Petition. The trial Court is directed to proceed further, in accordance with law, without being influenced by any of the observations made by this Court while deciding this Criminal Miscellaneous Petition.

17. No order as to costs.

Sd/-

**(Narendra Kumar Vyas)
Judge**

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