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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 91 of 2013

1. Radha Madav Industries Private Limited, a Company Registered under provisions of Companies Act, 1956 having its registered office at Block-E, 1st Floor, Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
2. R.K. Agrawal, S/o Late Ram Kishore Agrawal, Director Radha Madav Industries Pvt. Ltd., Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
3. M.L. Sultaniya, S/o Late Shri Lakhewar Prasad Sultaniya, Director Radha Madav Industries Pvt. Ltd, Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
4. Mahesh Kumar Agrawal, Director Radha Madav Industries Pvt. Ltd., Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
5. Ramesh Agrawal, Director Radha Madav Industries Pvt. Ltd., Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
6. Satish Kumar Agrawal, Director Radha Madav Industries Pvt. Ltd., Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)
7. Nitin Kumar Agrawal, Director Radha Madav Industries Pvt. Ltd., Regd. Office at Block-E, 1st Floor Shree Ram Towers, Vyapar Vihar, Bilaspur, District- Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through Station House Officer, Police Station- Chakarbhatha, District- Bilaspur (C.G.)
2. South Eastern Coalfields Ltd. (A Subsidiary of Coal India Ltd.), having its Registered Office at Basant Vihar, Seepat Road, Bilaspur (C.G.) Through its Chief General Manager (S&M).

---- Respondents

For Petitioners	:	Mr. Ashish Shrivastava, Sr. Advocate with Mr. Amit Vema, Advocate.
For State/ Res. No. 1	:	Mr. Rakesh Sahu, Dy. Govt. Advocate.
For Respondent No. 2	:	Mr. Vivek Agrawal, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

25.08.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India with a prayer to set aside the impugned FIR No. 465/2011 dated 21.12.2011 registered at Police Station- Chakarbhatta, Bilaspur, District- Bilaspur (C.G.) against the petitioners company and its directors for committing offence punishable under Sections 420, 467, 468, 120B & 34 of IPC.
2. Learned Senior counsel appearing for the petitioners would draw attention of this Court towards order dated 26.06.2019 passed by this Court wherein, it has been mentioned as under:-

“It is informed that the concerned police has submitted their closure report before the concerned Magistrate”.

3. Learned Senior counsel would further submit that no order has been passed with regard to the closure report submitted by the police.
4. The prosecution has already submitted its closure report before the Judicial Magistrate, but no final decision has been taken, therefore, it is mandatory on the part of the Judicial Magistrate to issue notice to the complainant before taking final decision as per law laid down by Hon'ble the Supreme Court in **Bhagwant Singh Vs. Commissioner of Police & another**¹, which held at paragraph 4 of the judgment as under:-

“4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156

1 (1985) 2 SCC 537

and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of

Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

5. The aforesaid judgment rendered by Hon’ble the Supreme Court has again come up for consideration before Hon’ble the Supreme Court in case of **Union Public Service Commission Vs. S. Papaiah & others**², wherein it has been held at para 10, which reads as under:-

“10. As per the law laid down in Bhagwant Singh's case (supra), the issuance of a notice by the Magistrate to the informant at the time of consideration of the final report is a "must". This binding precedent which is the law of the land, has not been followed by the Vth Metropolitan Magistrate and was wrongly ignored by the revisional court also.”

6. In view of the above stated legal position, the present writ petition is disposed of with direction to the learned Judicial Magistrate to issue notice to the complainant before taking final decision on the closure report. If no final decision has been

2 (1997) 7 SCC 614

taken by the learned Judicial Magistrate on the closure report submitted by the police, then the Magistrate will take a decision after notice to the complainant within an outer limit of three months from the date of receipt of copy of order passed by this Court. However, liberty is reserved in favour of the petitioners to file a fresh petition, if occasion arises in future.

7. With these observations and directions, this writ petition stands disposed of.

Sd/-
(Narendra Kumar Vyas)
Judge