

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 106 of 2018

Tularam Patel, S/o Dhajaram Patel, Aged About 36 Years, R/o Village-Khaira, Tahsil & District- Bilaspur (C.G.)

Present Address- Devnandan Nagar Face - 1, Near Shri Jugal Kishor Pandey, Advocate House, Tahsil & District- Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Director General of Police, Police Head Quarter, Civil Line Raipur (C.G.)
2. Inspector General of Bilaspur Range, I.G. Office, Near Nehru Chowk, Bilaspur (C.G.)
3. Superintendent of Police, Near Nehru Chowk, Bilaspur (C.G.)
4. Station House Officer, Police Station- Sarkanda, District-Bilaspur (C.G.)

---- Respondents

For Petitioner : Mr. Neeraj Choubey, Advocate.

For State/respondents : Mrs. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

28.06.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India mainly contending that the petitioner is practicing advocate and criminal incident happened with the petitioner, when Ambika Tiwari, Sitakant Tiwari, Girish Sharma, Gyanchand Pathak, Budhswar Naya & others have assaulted him. They have committed the offence of attempt to kill the petitioner. The petitioner has suffered injuries and on the basis of point of knife, poison was inserted into his mouth. Initially, the police has investigated and registered the offence as Crime No. 0/2015 under Section 364, 307, 328, 34 of I.P.C. against the culprits. The case was transferred to Police Station- Sarkanda,

District- Bilaspur (C.G.). Police Station- Sarkanda has not initiated any action against the culprits, therefore, the petitioner has filed WPCR No. 138 of 2015 before this Court and this Court vide its order dated 02.12.2015, disposed of the matter directing the concerned police authorities to investigate the matter within a reasonable time, but still they have not completed the investigation, therefore, he has filed Contempt Case No. 241 of 2016 before this Court and during pendency of that contempt petition, the respondent authorities have informed this Court that they have completed the investigation and final report has been submitted before the concerned Magistrate.

2. Respondent No. 4 has not investigated the matter properly and submitted closure report before the Chief Judicial Magistrate, Bilaspur, who after perusing the record, was pleased to reject the closure report vide its order dated 17.04.2017. Thereafter, no action has been taken by the police authorities. The complainant vide its complaint dated 01.05.2017 has requested Superintendent of Police, Bilaspur to register offence against the culprits for committing offence under Sections 364, 307, 328, 34 of I.P.C. Despite this, no action has been taken by the police authorities till date.
3. Since the learned Chief Judicial Magistrate has already rejected the closure report given by the police, therefore, the respondents are duty bound to complete the investigation and submit final report before the concerned Magistrate. As per the record, it reflects that the alleged incident is of 12.04.2015 and even after lapse of six months, there is no further progress in the investigation.
4. The order of Chief Judicial Magistrate Bilaspur dated 17.04.2017, by which closure report No. 04/2016 in connection with Crime No. 140/2015 registered at Police Station- Sarkanda, Bilaspur for committing offence under Sections 364, 307, 328/34 of I.P.C. has been rejected. The State has preferred Criminal

Revision No. 09/2018 before Fourth Additional Sessions Judge, Bilaspur, which was dismissed vide its order dated 18.05.2018.

5. The State has filed return, wherein they have recorded finding that after appreciating the material and evidence brought on record, it is crystal clear the complainant Tularam Patel has given a forged report, therefore, the case is liable to be rejected and after receiving the information, they have submitted the closure report 04/2016 for approval before the learned court.
6. Since the final report has already been submitted by the police authorities under Section 173 of the Cr.P.C., still if the petitioner has grievance, therefore, he may file complaint before the concerned Judicial Magistrate First Class.
7. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, has examined the issue holding that the petitioner has remedy of filing of complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. The Supreme Court has again considered and decided the issue in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage**² and **M. Subramaniam & another Vs. S. Janaki & another**³.
8. Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file complaint under Section 200 of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.
9. It is made clear that this Court has not expressed any opinion on

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

³ (2020) 16 SCC 728

merits of the case whether the complaint discloses any criminal offence or not.

10. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Arun