

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 167 of 2018

- Devlal Bharti S/o Shri Lukuram Bharti, Aged About 48 Years R/o Pension Bada, D - 21 Old Pension Bada, P.S. Civil Lines, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Home, Mantralaya, Naya Raipur, Raipur, P.S. Naya Raipur, Civil And Revenue District Raipur Chhattisgarh.,
2. Inspector General Of Police, Range Raipur Chhattisgarh. Civil And Revenue District, Raipur Chhattisgarh.,
3. City Superintendent Of Police, Office Of Sp, Raipur Chhattisgarh Civil And Revenue District Raipur Chhattisgarh.,
4. Station House Officer, P.S. Special Police Station (Ajak) Kalibadi, Raipur Chhattisgarh, Civil And Revenue District Raipur Chhattisgarh.,
5. Kirtivardhan Upadhyay, President, Mantralaya Karmrchari Sangh, Mantralaya, Naya Raipur, Chhattisgarh. Civil And Revenue District Raipur Chhattisgarh.,

---- Respondents

For Petitioner : Mr. Akhilesh Dalapati, Advocate.

For State : Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

02-08-2021

1. The petitioner/complainant has preferred the present petition under Article 226 of the Constitution of India against illegality and irregularity act committed by the respondent authorities i.e., respondents No. 3 and 4 for not registering the FIR against respondent No.5.
2. The brief facts, as projected by the petitioner, are that the petitioner is presently working as Private Secretary of Additional Chief Secretary, Department of Panchayat and Rural Development and also holding the post of the President

of Stenographers' union at Mantralaya. On 22-7-2016 around 11.00 am general assembly was called for the officers and staff wherein almost every department's officers and staff members were present. The sole agenda of this was to consider better facilities and safety of all the employees. The main grievance was about the death of a co-worker staff due to the incident occurred on 20-07-2016. This assembly was commenced by Shri Kirtivardhan Upadhyay who is a Section Officer at Forest Department and also President of Chhattisgarh Karmachari Mantralayein Sangh. He was not addressing the assembly on the main topic and started on some other topic. Being aggrieved by this act, an objection was raised by the petitioner as well as by other presented staff. It is pertinent to mention here that the Union Secretary Shri K.P. Netam supported the petitioner and called him on the stage to speak about the assembly agenda. On this occasion, respondent No.5 started misbehaving and profanity and caste related words to the petitioner. On this act of respondent No.5, other staff members of Scheduled Castes and Scheduled Tribes objected but respondent No.5 switched off the mike and started misbehaving and abused them in the name of their caste. Being aggrieved by the act of respondent No.5, petitioner along with staff members approached respondent No.1/Chief Secretary and gave him representation on 22-7-2016 (Annexure P/1) for taking stern action against respondent No.5. Thereafter, on 24-7-2016 the petitioner along with other 13 staff members of the Mantralaya approached the Special Police Station and submitted written complaint against respondent No.5 for lodging FIR against him vide complaint dated 24-7-2016 (Annexure P/2). Thereafter, on 25-7-2016 (Annexure P/5) he made a complaint to Rajya Anusuchit Jati Janjati Auyog and in response to this, Ayog issued inquiry letter vide its memo dated 30-7-2016 to take necessary action against respondent No.5, thereafter on 26-9-2016 (Annexure P/6) he made a

complaint to IG to take necessary action in this matter. Since no action has been taken by the respondent authorities to lodge FIR against respondent No.5, the petitioner approached this court by filing the present petition.

3. The petitioner has filed the present writ petition before this Court and prayed for following reliefs:-

“10.1 That this Hon'ble Court may kindly be pleased to issue appropriate writ directing respondent No.4 to register FIR against respondent No.5 on the basis of complaint made by the petitioner.

10.2 That Hon'ble High Court may kindly be pleased to issue appropriate writ commanding the respondents to conduct proper investigation according to Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

10.3 The Hon'ble High Court may kindly be pleased to grant any other relief deemed fit and proper in facts and circumstances of the case. ”

4. From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of complaint, FIR should be registered against respondent No. 5 under the Act, 1989.
5. Learned counsel for the petitioner submits that the preliminary enquiry conducted by the respondent authorities, is not permissible as per the judgment rendered by the Hon'ble Supreme Court in **Union of India Vs. State of Maharashtra & others**¹, which reads as under:-

“68. The direction has also been issued that the D.S.P. should conduct a preliminary inquiry to find out whether allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognisable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in *Lalita Kumari v. State of U.P.* [(2014) 2 SCC 1] by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be

¹ (2020) 4 SCC 761

conducted by the person of the rank of D.S.P. The number of D.S.P. as per stand of Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered in such a case how a final report has to be filed in the Court. Direction 79.4 cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-a-vis the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act of 1989. ”

6. From perusal of relief sought, it is quite clear that the petitioner through his complaints dated 22-7-2016 (Annexure P/1) 24-7-2016 (Annexure P/2), 25-7-2016 (Anenxure P/5) and 26-7-2016 (Annexure P/6) wants to register the offence against respondent No. 5 and to take action against him, for which the petitioner has remedy of filing a complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. From the above law laid down by the Hon'ble Supreme Court, it is quite vivid that before registration of FIR under the Act, 1989, no preliminary enquiry is required, therefore, initiation of preliminary enquiry conducted by the respondent (Annexure R/1) is illegal and bad in law, which is liable to be quashed, accordingly, it is quashed.
7. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**², 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**

² (2008) 2 SCC 409

***Yashwant Dhage* and *M. Subramaniam & another* Vs. *S. Janaki & another*³.**

8. Considering the facts and materials on record and in the light of the law laid down by Hon'ble the Supreme Court in the above cited judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file a 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 shall 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 merits of the case whether the complaint discloses any criminal offence or not.
10. In view of the above, the instant writ petition is allowed with liberty granted in favour of the petitioner to file complaint under Section 200 of the Cr.P.C.

Sd/-
(Narendra Kumar Vyas)
Judge

Raju

³ (2020) 16 SCC 728