

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.37 of 2014**

Umesh Sharma, aged about 35 years, S/o Shri J.L. Sharma,
Occupation Advocate, R/o Ramsagar Para, Bhatapara, Police
Station Bhatapara-City, Tahsil Bhatapara, Civil and Revenue
District Baloda Bazar-Bhatapara (C.G.)

(Accused)
---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Home, Secretariat, Mahanadi Bhawan, New Raipur, Police Station Rakhi, Post Office Rakhi, District Raipur (C.G.)
2. Director General of Police, Police Head Quarters, Mahanadi Bhawan, New Raipur, Police Station Rakhi, Post Office Rakhi, District Raipur (C.G.)
3. Inspector General of Police, Police Head Quarters, New Raipur, Police Station Rakhi, Post Office Rakhi, District Raipur (C.G.)
4. Superintendent of Police, Civil and Revenue District Baloda Bazar-Bhatapara (C.G.)
5. Station House Officer, Police Station Bhatapara (City), Civil and Revenue District Baloda Bazar-Bhatapara (C.G.)

---- Respondents

For Petitioner: Mr. Y.C. Sharma, Advocate.

For Respondents / State: -

Mr. Jitendra Pali, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/01/2021

1. The petitioner seeks quashing of charge-sheet and the entire proceeding initiated on the basis of FIR for the offences punishable under Sections 506 & 186 of the IPC on the ground that initiation of such proceeding is absolutely without

jurisdiction and without authority of law in view of the fact that offence under Section 186 of the IPC is cognizable only on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate and both the offences are non-cognizable offences, therefore, FIR could not have been registered on the basis of FIR made by Constable Dakeshwar Sarpar.

2. Return has been filed by the State / respondents holding that the petitioner has rightly been prosecuted for interfering with the public duty being performed by the said Constable i.e. while producing accused in the said criminal case namely one Roshani Tiwari.
3. Mr. Y.C. Sharma, learned counsel appearing for the petitioner, submits that Section 186 of the IPC could not have been taken cognizance of by the learned Magistrate on the basis of charge-sheet filed by the police in view of the provision contained in Section 195(1)(a)(i) of the CrPC, as it could have been taken cognizance on the basis of complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Likewise, Section 506 of the IPC is non-cognizable offence, therefore, on the basis of police report, no cognizance could have been taken for that offence also.
4. Mr. Jitendra Pali, learned State counsel, submits that FIR has rightly been registered against the petitioner and the petitioner has rightly been prosecuted for the aforesaid offences and as such, no interference is called for.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Admittedly, on the report of Constable Dakeshwar Sarpar, offences under Sections 186 & 506 of the IPC have been registered against the petitioner. Sections 186 & 506 of the IPC, both, are non-cognizable offences.
7. Section 195(1)(a)(i) of the CrPC provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. As such, Section 195(1)(a) of the CrPC clearly bars the cognizance of offence punishable under Section 186 of the IPC on the basis of police report unless the complaint in writing of the public servant concerned is filed before the jurisdictional criminal court and as such, no cognizance should have been taken by the learned Magistrate in respect of the said offences. Therefore, on the basis of police report, no cognizance can be taken of the offence punishable under Section 186 of the IPC in view of the bar contained in Section 195(1)(a)(i) of the CrPC. Similarly, Section 506 of the IPC is criminal intimidation and the punishment provided is two years; the said offence being non-cognizable, therefore, by virtue of Section 155(2) of the CrPC, no police officer is entitled to investigate the said non-cognizable case without the order of the Magistrate having power to try such case or

commit the case for trial. Only Section 506 Part-II of the IPC has been made cognizable. Thus, Section 506 of the IPC is non-cognizable offence and investigation by police officer without the order of the Magistrate is clearly barred under Section 155(2) of the CrPC.

8. Thus, it is held that in order to prosecute an accused for the offence punishable under Section 186 of the IPC, it is imperative to undergo the procedure envisaged under Section 195(1)(a)(i) of the CrPC i.e. complaint in writing of public servant concerned or some other public servant to whom he is subordinate, otherwise cognizance of offence under Section 186 of the IPC cannot be taken and if this imperative provision contained in Section 195(1)(a)(i) of the CrPC is not complied with, the entire prosecution for offence under Section 186 of the IPC would be rendered *void ab initio*, as Section 195 of the CrPC is an exception to the general rule contained in Section 190 of the CrPC wherein any person can set the criminal law in motion. The provisions of Section 195 of the CrPC are mandatory and non-compliance with it will make the entire process *void ab initio* and without jurisdiction as well. Similarly, offence under Section 506 of the IPC being non-cognizable, police report under Section 173(8) of the CrPC cannot be filed. Even otherwise, taking the contents of complaint dated 10-6-2013 as it is, no offence under Section 506 of the IPC is *prima facie* made out against the petitioner.
9. As such, charge-sheet as framed and filed against the petitioner for the offences punishable under Sections 186 &

506 of the IPC is expressly barred under Sections 195(1)(a)(i) & 155(2) of the CrPC. Accordingly, Criminal Case No.393/2013 pending against the petitioner before the Court of Judicial Magistrate First Class, Bhatapara for the offences punishable under Sections 186 & 506 of the IPC is hereby quashed and he is acquitted of the said charges.

10. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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