

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 30-07-2021

Delivered on : 07-09-2021

CRMP No. 691 of 2018

- Mahendra Singh S/o Late Shri Sardar Bhagat Singh Aged About 67 Years R/o Thana Khamariya, District Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through Station House Officer, Thana Ganj, District Raipur Chhattisgarh,
2. Kulwant Singh S/o Late Shri Sardar Bhagat Singh Aged About 62 Years R/o Thana Khamriya, District Bemetara Chhattisgarh,
3. Kalyan Singh S/o Late Shri Sardar Bhagat Singh Aged About 58 Years R/o Hotel Satkar Gali, Narmada Para, Raipur District Raipur Chhattisgarh,
4. Hitendra Singh S/o Late Shri Bhajan Singh Aged About 34 Years R/o Thana Khamariya, District Bemetara Chhattisgarh,
5. Varanjeet Kaur W/o Late Shri Bhajan Singh Aged About 58 Years R/o Thana Khamariya, District Bemetara Chhattisgarh,

---- Respondents

For Petitioner	:	Mr. Abhyuday Singh, Advocate.
For State/ respondent No.1	:	Mr. Sudeep Verma, Dy. Govt. Advocate and Mr. Vinod Tekam, Panel Lawyer.
For respondent No.2 to 4	:	Mr. Pragalbha Sharma, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 9-2-2018 (Annexure P/1) passed by the First Additional Sessions Judge, Raipur in Criminal Revision No. 460 of 2017 whereby the First Additional Sessions Judge affirmed the order dated 30-8-2017 passed by learned Judicial Magistrate First Class, Raipur (Annexure P/2) in unregistered complaint wherein

learned Judicial Magistrate First Class has held that from perusal of the complaint the dispute pertains to a civil dispute, therefore, *prima facie*, registration of complaint is not permissible and dismissed the complaint.

2. The facts projected by the petitioner, in brief, are that the petitioner is the owner of a residential land situated at Narmada Para, Satkar Hotel Gali, Indira Gandhi Chowk, Raipur, bearing plot No. 8/1 of Khasra number 497/2 admeasuring 3010 sq. It is contended by learned counsel that the said property was purchased by the petitioner out of his own income by way of a sale deed executed on 1-7-1972. The petitioner on his own accord and out of his own earnings constructed a residential house on the said property in the year 2007-2008 after obtaining necessary permission and sanction from Nagar Palika Nigam, Raipur. Thereafter, respondent No.3 who is brother of the petitioner was residing in the said house. In the year 2011 the petitioner insisted his brother/respondent No.3 to vacate the said property as he needed the property for his own need and purpose. It has been informed by respondent No.3 that he is also the owner of the said property, therefore, he refused to vacate the property. The petitioner sought information under Right to Information Act from Nagar Palika Nigam, Raipur, wherein it⁴ has been informed that in the year 2009 the name of the petitioner was mutated in the municipal records of the property in favour of respondents No. 2 to 4 along with the petitioner by submitting a consent letter dated 17-4-1995. Thus, the property of the sole ownership of the petitioner was recorded to be co-owned by respondents No. 2 to 4 in the records of Nagar Palika Nigam, Raipur based on the settlement deed dated 17-4-1995.
3. The complainant on the basis of the factual matrix, has filed the complaint before the learned Judicial Magistrate First Class contending that respondents No. 2 to 4 with mala fide intention to grab the valuable property have fabricated consent letter

which is an offence under Sections 420, 465, 467, 468 and 471 of the IPC. The petitioner made a complaint before the Police Station, Maudhapara to register FIR against the respondents and on 29-1-2013 he has also sent legal notice to respondents No. 2 to 5, but no action has been taken by the Police of Police Station Maudhapara, therefore, he has filed present complaint on 18-3-2013 before the Senior Superintendent of Police Raipur and prayed for registration of FIR against respondents No. 2 to 4 for commission of offence punishable under Sections 420, 465, 467, 468 , 471, 120-B, 34 of the IPC.

4. The petitioner has examined himself on 6-12-2015 and one Devendra Singh as PW/2 for recording preliminary evidence before registration and the hand writing expert Smt. Dr. Sunita Dhenge on 3-8-2015. The petitioner in his complaint statement has categorically stated that forged consent letter was prepared and by this document names of respondents No. 2 to 4 have been incorporated in the property. The other witnesses examined by the complainant have also stated the same version. The hand-witting expert has also deposed before the trial Court that as per his report, the signature is forged one. It has been further contended that without considering the primary evidence adduced, the trial court has recorded that it is purely a civil dispute, therefore, criminal law cannot be taken into motion. . Dismissed the complaint vide its order dated 30-8-2017. Thereafter, the petitioner has preferred criminal revision before the learned Sessions Judge, Raipur, which was subsequently transferred to the court of First Additional Sessions Judge, Raipur and registered the case as Criminal Revision No. 460 of 2017. Learned First Additional Sessions Judge, Raipur has dismissed the criminal revision by recording finding that there is no material irregularity or illegality in the order dated 30-8-2017 passed by the Judicial Magistrate First Class, Raipur, warranting any interference by this court. Both the orderd have been assailed before this court by filing the instant petition.

5. The instant petition was admitted by this court on 30-1-2019 and notices were issued to respondents No. 2 to 5 and in pursuance of the notice issued by this court, respondents No. 2 to 5 have entered their appearance and they have not filed their return. The State has also not filed its return. With consent of the parties, the matter was heard finally. Learned counsel for the petitioner as well as respondents No. 2 to 4 have filed their written synopsis which were considered by this court while passing the final order.
6. Learned counsel for the petitioner in his written synopsis has reiterated factual matrix of the case and would also submit that the findings recoded by the learned Judicial Magistrate First Class suffers from non-application of mind against the law laid down by Honorable Supreme Court in this regard and he would rely upon the judgment rendered by Honorable the Supreme Court in **Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi, reported in 1978 AIR 851** wherein Hon'ble Supreme Court has observed in para 8 which is extracted as under;

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed

objectively with reference to the language used in the order itself."

7. He has further relied upon the judgment rendered by the Hon'ble Supreme Court in **Arun Bhandari vs. State of Uttar Pradesh, reported in (2013) 2 SCC 801** wherein Hon'ble the Supreme Court in para 26 has observed which is extracted as under.

"26. At this stage, we may usefully note that some times a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes".

8. He has further relied upon the judgment rendered by the Hon'ble Supreme Court in **Lalita Kumari vs. State of Uttar Pradesh, reported in (2014) 2 SCC** wherein Hon'ble the Supreme Court in para 119 has observed which is extracted as under.

"119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a

cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR”.

9. He has further relied upon the judgment rendered by the Hon'ble Supreme Court in **R. Kalyani vs. Janak C.Mehta, reported in (2009) 1 SCC 516** wherein Hon'ble the Supreme court has observed in para 15 which is extracted as under.

“15. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. He would further submit that the petition be allowed and the orders passed by the First Additional Sessions Judge, Raipur and Judicial Magistrate First Class, Raipur be quashed and Judicial Magistrate First Class be directed to proceed further in the matter by directing the Police authorities to register FIR under Sections 420, 465, 467, 468 and 471 of IPC against the respondents No. 2 to 5, investigate the matter and submit the final report.

11. Per contra, learned counsel for the respondents No. 2 to 5 vehemently opposing the submission made by the petitioner would submit that there is a categorical finding of the Police against the petitioner that the dispute is of civil nature and refused to initiate criminal action. In support of his arguments, he has relied upon the judgment of Honorable the Supreme Court in case of **G. Sagar Suri vs. State of Uttar Pradesh, reported in (2000) 2 SCC 636** wherein Hon'ble the Supreme Court has held in para 8 and relevant portion thereof is extracted as under:

“8.It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, Jurisdiction- under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice”.

12. He has also relied upon the judgment of Honorable the Supreme Court in **C. Muniappan and others vs. State of Tamilnadu, reported in (2010)9 SCC 567** wherein Honorable the Supreme Court has held in para 25 which is extracted as under:

“25. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction”.

13. I have heard learned counsel for the parties and perused the documents and records of the court below.
14. It is well settled by the judicial pronouncement that at the time of issuance of process the court is required to evaluate the materials and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of the ingredients constituting ,the alleged offence.

The limited purpose is only to find out whether there is ground for presuming that the accused has committed the offence and not for arriving at the conclusion whether the ingredients are likely to lead to a conviction. It is also well settled by Hon'ble the Supreme Court that at the time of issuance of process, the probity of the materials on record by the prosecution or complainant has to be accepted as true for that particular stage. The averments in the complaint and the preliminary evidence and the documents on record certainly calls for issuance of process. It has been further well settled by Honorable the Supreme Court that the Magistrate making an enquiry under Sections 200 and 202 of Cr.P.C has no jurisdiction to weigh the evidence in golden scales as has been done by both the courts below at this stage. It is the bounden duty of the Magistrate to elicit all facts not merely with a view to protect the interest of an accused who is absent but also with a view to book a person against whom the allegations have been made. What has to be seen is that whether there are sufficient grounds for proceeding and not to see whether there are sufficient grounds for conviction.

15. Hon'ble the Supreme Court in **Kewal Krishan vs Surajbhan, reported in (1980) (suppl) SC 499** has held in para 10 which is extracted as under.

“10. In the instant case, there was prima facie evidence against Suraj Bhan accused which required to be weighed and appreciated by the Court of Session. At the stage of [Sections 203 and 204, Criminal Procedure Code](#) in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under [Sections 200 and 202, Criminal Procedure Code](#), there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court.

The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. This Court has held in Ramesh Singh's case (ibid), that even at the stage of framing; charges the truth, veracity and effect of the evidence which the complainant produces or proposes to adduce at the trial, is not to be meticulously judged. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of [Sections 202/204](#), if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session”.

16. Hon'ble the Supreme Court in **Chandra Deo Singh vs. Prakash Chandra Bose**, reported in **AIR 1963 SC 1430** has observed in paras 7 to 9 which are extracted as under.

“7. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued ; nor can he examine any witnesses at the instance of such a person. of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr. Sethi for

respondent No. 1 that the very object of the provisions of Ch. XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr. Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects, behind the provisions of [s. 202, Cr.P.C.](#) is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under [s. 202](#) can in no sense be characterized as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of respondent No. 1 but from the fact that they were persons who were alleged to have been the -associates of respondent No. 1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for

respondent No. 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection; the observations of this court in [Vadilal Panchal v. Dattatraya Dulaji Ghadigsonkar](#) (1), may usefully be quoted "The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage for the person complained against can be legally called upon to answer the 'accusation made against him only when a process has issued and he is put on trial."

Coming to the second ground, we have no hesitation in holding that the test propounded by the learned single judge of the High Court is wholly wrong. For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. A number of decisions were cited at the bar in which the question of the scope of the enquiry under [s. 202](#) has been considered. Amongst those decisions are : [Parmanand Brahmachari v. Emperor](#), 1930 Pat 30, [Radha Kishun Sao v. S. K. Misra](#), AIR 1949 Pat 36, [Ramkisto Sahu v. The State of Bihar](#), AIR 1952 Pat 125; [Emperor v. J. A. Finan](#), AIR 1931 Bom 524 and [Baidya Nath Singh v. Muspratt](#) ILR 14 Cal 141. In all these cases, it has been held that the object of the provisions of [HYPERLINK "https://indiankanoon.org/doc/1149595/"](https://indiankanoon.org/doc/1149595/) s. 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations, of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned judges

in some of these cases have been at pains to observe that an enquiry under [s. 202](#) is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-s. (1) of [s. 202](#) itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality, of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

9. This brings us to the third ground. [Section 203](#) of the Code of Criminal Procedure which empowers a, Magistrate to dismiss a complaint reads thus :

" The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the witnesses and, the result of the investigation or inquiry, if any, under [s. 202](#), there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing."

17. Hon'ble the Supreme Court in **State of Bihar vs. Ramesh Singh, reported in 1977 (4) SCC 39**, has observed in para 5 which is extracted as under:

"5. [In Nirmaljit Singh Hoon v. The State of West Bengal](#) and an- other(1)-Shelat, J. delivering the judgment on behalf of the majority for the Court referred at page 79 of the report to the earlier decisions of this Court in [Chandra Deo Singh v. Prakash Chandra Bose](#)(2) where this Court was held to have laid down with reference to the similar provisions contained in [sections 202](#) and [203](#) of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the

appropriate stage and issue of a process could not be refused." Illustratively, Shelat J, further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case."

18. From bare perusal of the complaint, it is crystal clear that the petitioner has contended that on the basis of forged signature of the petitioner one forged consent letter dated 17-4-1995 was created by the respondents No. 2 to 5 for recording of the names of respondents No. 2 to 5 with the petitioner in the record of the Municipal Corporation, Raipur. Thus, it is prima facie, allegation of commission of offence is made out in the complaint. As such, there is sufficient material before the Judicial Magistrate First Class to issue process to the respondents, despite this he has dismissed the complaint which prima facie, suffers from non-application of mind and thereafter the revisionary court has committed illegality in rejecting the revision filed by the petitioner. Even, it has been fairly settled by Hon'ble Supreme Court that though there may be a civil dispute between the parties, but filing of a criminal case is not barred as held by the Hon'ble Supreme Court in **Priti Saraf and another vs. State of NCT of Delhi and another**, reported in AIR 2021 SC 1531, wherein it has been held paras 31 and 32 which are extracted as under.

"31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The [Criminal Procedure Code](#) contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care

and caution to interfere in the complaint/FIR/charge-sheet in exercise of its

inherent jurisdiction.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under [Sections 406](#) and [420](#) IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under [Section 482](#) CrPC for quashing such proceedings”.

19. Thus, considering the facts from all the angles, it is clear that the learned Judicial Magistrate has committed illegality in dismissing the complaint and thereafter the revisional court has further committed material irregularity in dismissing the criminal revision filed by the petitioner. Considering all the facts, I am of the view that the orders passed by learned Judicial Magistrate First Class, Raipur and learned First Additional Sessions Judge, Raipur are liable to be and are hereby set aside.
20. Learned Judicial Magistrate First Class, Raipur is directed to register the complaint and proceed with the matter, in accordance with law. It is made clear that this court has not expressed anything on merit and it is for the learned Judicial Magistrate First Class to apply his mind after considering the facts of the case on the evidence adduced before it during the course of trial and in accordance with law.
21. With the aforesaid observations and direction, the instant

petition is allowed.

22. Records of the courts below be sent forthwith for further progress of the trial.

Sd/-

(Narendra Kumar Vyas)

Judge

Raju