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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 269 of 2021

Reserved on 08.07.2021

Delivered on 06.08 2021

1. Bhupendra Kumar Sahu, S/o Mr. Govindram Sahu, Aged About 31 Years R/o Ward No. 7, Salihapara, Police Station Bhanupratappur, Bhanupratappur, District Kanker Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Superintendent Of Police, District Kanker C.G.

1(A) Chhattisgarh State Woman Commission Raipur Through Its President, Gayatri Bhawan, 13 Jal Vihar Colony, Raipur Chhattisgarh.

2. Station House Officer Police Station Bhanupratappur, Kanker Chhattisgarh.

3. Station House Officer Police Station Telibandha, Raipur Chhattisgarh.

- 4." V "

---- Respondents

For Petitioner : Shri Raza Ali, Advocate

For State : Shri Rakesh Sahu, Dy. Government,
Advocate

For respondent No.4 : Shri R. K. Pali, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. The petitioner has filed this writ petition (criminal) challenging the FIR dated 14.12.2020 registered in connection with Crime No.239 at Police Station Bhanupratappur District Kanker for commission of offence punishable under Sections 498-A, 506-B, 34, of IPC and Section 4 of Dowry Prohibition Act, 1961.
2. The brief facts as projected by the petitioner are that the respondent No.4 is wife of the petitioner, she made complaint to the Chhattisgarh State Women Commission Raipur (in short Commission) mainly contending that the petitioner is harassing her, committing unnatural sex with her and tortured her for

dowry. She was physically and mentally tortured and even she has been given threat to kill by the petitioner and his parents. It has been further contended by respondent No.4, the mother-in-law of the petitioner is always harassing her she was abusing, pressurized her not to conceive pregnancy as such she was given medicine to prevent the same. The act committed by the petitioner and his family members falls under Sections 498-A, 506-B, 34 of IPC and Section 4 of Dowry Prohibition Act, 1961.

3. The petitioner has filed this petition wherein the Commission was not arrayed party in this case, therefore, this Court was directed the petitioner to make party to the Commission as respondent because authority and jurisdiction of the commission has been assailed by the petitioner. In pursuance of order dated 9-6-2021 passed by this Court, "State Commission for Women" has been arrayed as respondent No.1-A before this Court. The learned counsel for the petitioner has further amended the petition, made certain averments as well as challenged the order dated 02.12.2020 and letter dated (Annexure P-1A) wherein it has been contended by him that Commission respondent No.1A has no authority to pass the order dated 02.12.2020 and has also no authority to issue direction to register FIR, as same would amount to judicial power and cannot be exercised by the Commission.
4. The learned counsel for the petitioner would submit that non investigation agency or non judicial body cannot exercise power under Sections 154, 153 or 200 of CrPC as the Commission has no authority to take initiation for registration of FIR and he would refer to the judgment of Hon'ble Supreme Court in the case of Naman Singh and Others Vs. State of UP reported in 2019 (2) 344 wherein the Hon'ble Supreme Court has held that the administrative body cannot exercise jurisdiction under Section 156(3), 200 of Code and cannot direct the police to register the FIR. He would further submit that from bare perusal of the FIR, no offence is made out. Therefore, initiation of criminal proceeding is bad-in-law and same is liable to be quashed. He would further submit that initiation of criminal proceeding is

nothing but abuse of process of law, therefore, registration on the strength of Commission is liable to be quashed.

5. The Commission has taken cognizance of the complaint as reflected in the order sheet filed by the petitioner by way of additional document, registered the complaint vide its order dated 26.10.2020 and thereafter proceedings were initiated. The respondent No.1A Commission considering the contention of the complainant as well as considering the submission of the petitioner has observed that it is justifiable to recommend the Police Station to register FIR. The Commission vide its letter dated 02.12.2020 has recommended the Police Station in-charge Telibandha District Raipur to register FIR against Bhupendra Sahu, Lalita Sahu, Govind Ram Sahu and Ravikant Sahu under Section 4 of prohibition of Dowry Act and other offences and thereafter, further observed that FIR may be transferred to Police Station Charama District Kanker and after registration of FIR submission of final report information may be given to the Commission.
6. The petitioner has challenged registration of FIR (Annexure P1) dated 14.12.2020 on the basis of direction /recommendation of Commission given to the Police Station for committing offence under Section 498-A, 506-B, 34 of IPC and Section 4 of Dowry Prohibition Act, 1961.
7. This Court has issued notice to the respondent No.1A and respondent No.3. Respondent No.3 has sought time to submit reply. But the learned counsel for the petitioner insisted for hearing of case. Therefore, matter is heard by this Court without considering, without reply from respondent side on the basis of material available on record.
8. The point to be determined by this Court. In this case whether the Commission can initiate proceeding for registration of FIR against the petitioner or not ? Before examining the issue aims and object of Commission has to be seen. The Commission has been constituted in pursuance of CG Rajya Mahila Aayog Adhiniyam, 1995 with an object to constitute the State

Commission for women to provide for matter connected therewith or incidental thereto. The Section 10 deals with the function of the commission. As per Section 10 the commission shall be performed all or any of the following functions has provided in the Act of 1995 which are as under:-

“10. Functions of the Commission. - (1) The Commission shall be perform all or any of the following functions, namely :-

- (a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- (b) present to the State Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (c) take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
- (d) participate and advise on the planning process of socio-economic development of women;
- (e) fund litigation involving issues affecting a large body of women;
- (f) make in-depth studies on-
 - (i) the economic, educational and health situation of the women of the State with particular emphasis on the tribal districts and areas which are underdeveloped with respect to women's literacy, mortality and economic development;
 - (ii) conditions in which women work in factories, establishments, construction sites and other similar situations, and recommend to the State Government on the basis of specific reports for improving the status of women in the said areas;
- (g) compile information, from time to time, on instances of all offences against women in the State, or in selected areas, including cases related to marriage and dowry, rape, kidnapping, abduction, eve-teasing, immoral trafficking in women and cases of medical negligence in causing delivery or sterilisation or medical intervention that relates to child bearing or child birth;
- (h) co-ordinate with the State Cell and District Cells for atrocities against women, if any, for mobilisation of public opinion in the State as a whole or in specific areas which would help in speedy reporting and detection of offences of such atrocities and mobilisation of public opinion against the offenders:
 - (i) receive complaints on-
 - (i) atrocities on women and offences against women;
 - (ii) deprivation of women of their rights relating to minimum

- wages, basic health and maternity rights;
- (iii) non-compliance of policy decisions of the State Government relating to women;
- (iv) rehabilitation of deserted and destitute women and women forced into prostitution;
- (v) atrocities on women in custody; and take up with authorities concerned appropriate remedial measures.
- (j) assist, train and orient the non-Government organisations in the State in legal counselling of poor women and enabling such women to get legal aid;
- (k) inspect or cause to be inspected a jail, remand home, women's institutions or other places of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- (l) perform functions relating to any other matter which may be referred to it by the State Government.
- (2) The State Government shall cause all the recommendations or reports, as may be presented to it by the Commission under sub-section (1), to be laid before the Legislature of the State alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations of the Commission and the reasons for the non-acceptance, if any, of any of the such recommendations.
- (3) The Commission shall while investigating any matter referred to in clause (1) or (i) of sub-section (1) have all the powers of a Civil Court trying a suit and in particular in respect of the following matters, namely :-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any Court or office;
 - (e) issuing commissions for the examination of witnesses and documents; and
 - (f) any other matter which may be prescribed.”

9. From the perusal of function enumerated in Section 10 of the Act of 1995, it is quite vivid that the commission has to help the women in distress. The State Commission has been broadly assigned to take up studies on issues of economic, educational and health care that may help in overall development of the women of the State; gather statics concerning offences against

women probe into the complaints relating to atrocities on women, deprivation on women of their rights in respect of minimum wages, basic health, maternity rights, etc. and ascertainment of facts take up the matter with the authorities concerned for remedial measures, help women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties.

10. The power functions and authorities of the State Orissa commission for women has come up for consideration before the Hon'ble Supreme Court in case of Bhabani Prasad Jain Vs. State of Orissa Commission reported in (2010) 8 SCC 633, the Hon'ble Supreme Court after examined the function of the commission has held in Paras 9 and 10 as under:-

“9. It would be seen from Section 10 of the 1993 Act that the State Commission has been authorized to take up studies in respect of economic, educational and health situation of the women of the State and also the working conditions of women in the factories, establishments, construction sites and make its recommendations to the State Government. The State Commission is empowered to compile information in respect of the offences against women and to coordinate with the State Cell and District Cells for atrocities against women. Further, the State Commission is competent to receive complaints in respect of the matters specified in Section 10(1)(d) and take up the grievances raised in the complaint/s with the concerned authorities for appropriate remedial measures. The State Commission is also given role of assisting, training and orienting the non-Government organization in the State in legal counseling of poor women and enabling such women to get legal aid. Under clause (f) of Section 10(1), the State Commission is authorized to inspect or cause to be inspected, a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities these matters for remedial action.”

“10. In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and healthcare that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the concerned authorities for remedial measures; help

women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or determine the rights of the parties.”

11. Now coming to the fact of present case, it is quite vivid that commission has only recommended / forwarded the complaint of the respondent No.4 to police station which cannot be presumed that the complaint has been registered on the strength of commission and Commission has not transgressed its jurisdiction. The commission has been constituted with an object to probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the concerned authorities for remedial measures
12. The learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court reported in (2019) 2 SCC 344 in case of Naman Singh Vs. State of UP and would refer part 7 of the judgment held as under:-
 - “7. It is therefore apparent that in the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an FIR on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an FIR himself in the matter. In such a case, entirely different considerations would arise. A reading of the FIR reveals that the police has registered the FIR on directions of the Sub-Divisional Magistrate which was clearly impermissible in law. The Sub-Divisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the FIR in the manner done is contrary to the law and without jurisdiction.”
13. The facts of the present case is altogether different as the Commission has been constituted by virtue of 1995 Act and object of the commission is to probe into the complaint relating to atrocities on women, Deprivation on women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the authorities concerned for remedial measures it means if the Commission after enquiry has found that something wrong has

been done by the petitioner therefore, the Commission has adopted remedial measures by recommending the police to register the FIR. The authorities exercised by the Commission is within their function as provided under the Act. Therefore, submission of the petitioner that FIR has been registered on the strength of Commission is unfounded and cannot be accepted. If the submission of the learned counsel for the petitioner is accepted the very object of the Commission will be frustrated.

14. The other submission of the learned counsel that from perusal of the FIR no case is made out, this will be required to be decided before the appropriate proceedings as the learned counsel for the petitioner has mainly made submission with regard to the authorities and jurisdiction of Commission for initiating steps for registration of offence against. Rest of the points are open and the petitioner has liberty to raise it before the appropriate forum. This Court is not going into the merit of the case so as not to prejudice either parties and also keeping in mind the jurisdiction of under Section 482 of the CrPC which has to be exercised rarely and sparingly. It is made clear that any observation made by this Court while deciding the present Writ Petition (Criminal) will not be constituted to be considered merit of the case and the forums which are available to the petitioner for raising his grievances may decided the case without being influenced from any of observation made by this Court.
15. The ultimate conclusion of this Court is that the police has rightly registered the FIR on the basis of recommendation made by the Commission. As such the writ petition (criminal) is without merit and accordingly it is dismissed at the motion hearing stage itself.

Sd/-
(Narendra Kumar Vyas)
Judge

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