

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

CRMP No. 515 of 2021

Virendra Singh Rajput S/o Shri Ghanshyam Singh Rajput Aged About 30 Years R/o Village And Post - Sildaha, Police Station And Tahsil - Pathariya, District - Mungeli (Chhattisgarh), District : Mungeli, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through - Superintendent Of Police, Bilaspur, District- Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh
2. Station House Officer Police Station - Sarkanda, District - Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh
3. Smt. Birash Bai Guleri W/o Shri Lainu Ram Guleri Aged About 40 Years Through - Natural Guardian (Abc), R/o Devri Pandhi, Police Station- Seepat, District - Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Respondents

CRMP No. 613 of 2021

Devanand Kenwat S/o Shri Komal Prasad Kenwat Aged About 28 Years R/o Village Kasdol Police Station Balaodabazat District Balodabazar-Bhatapara (Chhattisgarh) At Present R/o Pachpedi Bilaspur (Chhattisgarh), District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Superintendent Of Police, Bilaspur District Bilaspur Chhattisgarh
2. Station House Officer Police Station Sarkanda, District Bilaspur Chhattisgarh
3. Smt. Birash Bai Guleri W/o Shri Lainu Ram Guleri Aged About 40 Years Through Natural Guardian (A B C) R/o Devri Pandhi, Police Station Seepat, District Bilaspur Chhattisgarh

---- Respondents

For Respective Petitioners	:	Shri S.P. Kale with Shri Lav Sharma, Shri Dheerendra Pandey, Advocates
For State/Res.No.1 & 2	:	Shri Udhav Sharma, Govt. Advocate
For Respondent No.3	:	Shri Deepak Jain, Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order

11/11/2021

1. These two petitions have been filed seeking quashment of the charge sheet filed by the investigating agency in Crime No.977 of 2020 on 17.12.2020.
2. Shri S.P. Kale, Advocate appearing in CRMP No.515 of 2021 would submit that the FIR was registered on 20.10.2020 at about 9:30 pm for alleged offence committed in between 5.4.2020 to 27.7.2020. In the FIR, which is based on written complaint at page-30 (in CRMP No.515 of 2021), no allegation of any nature has been levelled against the petitioners who are working as Police Constables at Police Station- Sarkanda, Bilaspur. Immediately after registration of FIR, statement of the prosecutrix was recorded under Section 164 Cr.P.C. by the jurisdictional Magistrate on 21.10.2020. In the statement recorded before the Judicial Magistrate also, no allegations have been levelled against the petitioners. After registration of complaint against one other person, prosecutrix subsequently lodged report before the Superintendent of Police, Bilaspur on 9.11.2020 vide Annexure P-3 making allegations of threat against the petitioners. Prior to it, one another complaint was lodged on 29.08.2020 before City Superintendent of Police (CSP), Bilaspur which was inquired into and the CSP found allegation levelled against the petitioners to be false. Copy of the inquiry report is placed on record as Annexure P-4. Based

on the report dated 9.11.2020, further statements under Section 161 Cr.P.C. as well as under Section 164 of Cr.P.C. were recorded and it is then only, the allegations have been levelled against the petitioners with ulterior motive. There is no provision under Code of Criminal Procedure of recording statement under Section 164 Cr.P.C. of complainant more than once. The whole exercise has been done only to falsely implicate the employees of police department. Documents executed by the prosecutrix and her mother clearly shows that the prosecutrix has submitted complaint against the police persons because they have scolded her and it is only in the manner to take revenge thereof. The petitioners, as alleged, came on 5.8.2020 in a Govt. vehicle which is reserved for emergency service under the State Emergency Service No.112. This vehicle is centrally monitored from the State Head Quarter, Raipur. The petitioners have also filed the location of the vehicle at page No.118 & 119 from which it is apparent that the location of the vehicle was not shown to have visited the place of incident at village- Pandhi. The place of incident and location of vehicle as obtained by the petitioners from official website of the Government under RTI would show that vehicle under dial No.112 at any point of time has not visited the place of incident i.e. village Pandhi. Learned counsel for the petitioners also referred to duty chart (at page No.120) and submitted that on the date of alleged incident i.e. 5.8.2020, the petitioner was on duty 6:00 am to 2:00 pm. Considering the entirety of the facts of the case, particularly the allegation levelled in the written complaint dated 20th October 2020, FIR registered on 20th October 2020 and statement recorded under Section 164 Cr.P.C. on 21.10.2020 along with the documents executed by the prosecutrix and her mother, is sufficient to show that the petitioners have been falsely implicated. He also pointed out that realising her mistake, complainant/prosecutrix has submitted no objection in proceedings of hearing bail application of the petitioners

wherein also she has narrated that the petitioners were not involved in commission of any offence. He submits that in view of aforementioned material available in the record, petition be allowed and the charge sheet filed against the petitioner be quashed.

3. Shri Dheerendra Pandey, learned counsel appearing for the petitioner in CRMP 613 of 2021 adopting the submissions of Shri S.P. Kale, Advocate further submits that the prosecutrix herself has submitted a letter before the SHO, Police Station- Sarkanda on 2.9.2020 in which it is mentioned that due to hatred mind, the complaint was made against the petitioners and she does not want any action on her complaint. He also pointed out that mother of the prosecutrix also executed an agreement mentioning that they do not want any action to be taken against the petitioners, which is sufficient to show that the petitioners have not committed any offence as alleged against them. The prosecutrix and her sister are habitual complainants and they have lodged other complaints also against other persons before police station. The petitioner when realized that the complainant is going to lodge false report against him, he submitted a report to the SHO of Police Station- Sarkanda making allegation that he has been threatened by sister of the prosecutrix. Along with the petition, inadvertently the first statement recorded under Section 164 of Cr.P.C. could not be filed but today statement under Section 164 Cr.P.C. recorded on 21.10.2020 is placed on record which may be considered. He submits that from perusal of documents filed along with the petition would show that the petitioners have been implicated falsely in the case.
4. Learned counsel for the State opposes the submissions made by learned counsel for the respective petitioners and submits that the specific allegations have been levelled against the petitioners. The alleged date of incident is of 5.8.2020 and

thereafter the prosecutrix has lodged report initially on 26.8.2020 making allegations against the petitioners also apart from other co-accused. The allegations are of serious nature. The police have not initially registered the crime against the petitioner but when subsequently a further complaint was made, statement of prosecutrix under Sections 161 and 164 Cr.P.C. were recorded in which there are specific allegations of commission of crime against the petitioners also. Grounds raised by the petitioner may be their defence but it cannot be considered while considering the prayer for quashment of charge sheet. He also submits that there is no bar of recording statements under Section 164 of Cr.P.C. by the Magistrate twice but it only provides the authority to the Magistrate to record statement of the complainant/prosecutrix immediately after registration of FIR. In heinous offence like offence under Sections 302, 376 IPC, the FIR/charge sheet is not to be quashed on the basis of settlement as held by Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab and Anr.** reported in (2012) 10 SCC 303. Documents placed on record i.e. agreement deed and letter of prosecutrix immediately after first complaint is prima facie sufficient for proceeding with the case against petitioners also. Location of the vehicle as placed is also of different time. Petitions being devoid of substance is to be dismissed.

5. Shri Deepak Jain, learned counsel for respondent No.3 submits that the Court may pass any orders in the facts of the case.
6. I have heard learned counsel for the parties. To appreciate the contention of learned counsel for the petitioners that initially no allegations have been levelled against the petitioners of any nature in the written complaint dated 20th October 2020, FIR dated 20th October 2020 and the statement recorded under Section 164 of Cr.P.C. dated 21.10.2020. I have perused the documents placed on record by the petitioner. At page No.103

(in CRMP No. 613 of 2021) there is written report filed by the prosecutrix before Superintendent of Police, Bilaspur on 26.8.2020. Perusal of the report would show that the said report was received by the concerned office on 27.8.2020. In the said report, allegation against the Police Constables have been levelled of commission of offence by them by taking her in the mobile vehicle engaged for emergency call service under dial No.112. The written report, FIR as referred by learned counsel for the petitioners is subsequent to the aforementioned report. The petitioners have also placed on record the agreement deed of mother dated 2.9.2020 and her statement dated 2.9.2020, further the application to the SHO of Police Station -Sarkanda dated 2.9.2020. In view of ruling of Hon'ble Supreme Court in the case of **Gian Singh** (supra), this document cannot be considered at this stage. Submission made by learned counsel for the petitioners and document relied upon by them may be their defence which can be taken by them at appropriate stage and appropriate forum and not in this petition seeking relief of quashment of charge sheet. This Court is refraining itself from elaborately discussing the material placed on record keeping in mind that it may be prejudicial to the interest of the parties because it is for the trial Court to apply its mind based on the evidence brought on record by the respective parties.

7. Considering the entirety of the facts and circumstances of the case, documents available on record and the ruling of Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajanlal** reported in (1992) Suppl. (1) SCC 335 and **Amish Devgan vs. Union of India** reported in (2021) 1 SCC 1, the petitions have no merit which are liable to be and are hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge