

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 455 of 2021

- Madan Lal Shrivastava S/o Late Laxmi Prasad Shrivastava Aged About 70 Years R/o Village Makri, P. S. Kunda District Kabirdham At Present R/o Shikshak Nagar, Mungeli P. S. Mungeli District Mungeli Chhattisgarh

---- Petitioner

Versus

1. State of C.G. Through The Secretary, Department Of Home, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Superintendent Of Police Kabirdham District Kabirdham Chhattisgarh
3. Station House Officer P. S. Kunda, District Kabirdham Chhattisgarh
4. Sitaram Satnami S/o Vishram Satnami Aged About 50 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh
5. Girja Bai Kurmi W/o Savant Aged About 54 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh
6. Basavan Kurmi S/o Gokul Aged About 58 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh
7. Bharat Kurmi S/o Savant Aged About 25 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh
8. Sushil Satnami S/o Tijau Aged About 27 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh
9. Uday Ram S/o Basavan Kurmi Aged About 52 Years R/o Village Makri, P. S. Kunda, District Kabirdham Chhattisgarh

---- Respondents

For Petitioner : Mr. F.S. Khare, Advocate.

For State : Mr. Vikash A. Shrivastava, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

22.07.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India with a prayer that respondents No. 1 to 3 be directed to register FIR against respondents No.4 to 9 on the basis of complaint made by him.

2. The brief facts as projected by the petitioner are that the agricultural lands of the petitioner and his brother and sister bearing Khasra No.479 area 1.52 acres is situated in village Makri, Police Station Kunda, District Kabirdham. The said land belongs to mother of the petitioner and his brother and sister, therefore, the petitioner, his brother and sister are only title holders of the property. As per law, the step son i.e., Vishnu Prasad who has no title or right to claim share of the property of his step mother. Despite of that, being the step son he has sold the land by committing fraud and cheated to respondent No.9. Therefore, a civil suit was filed by the petitioner, his brother and sisters against Vishnu Prasad and respondent No.9 which was allowed in the year 2012. The first appeal preferred by respondent No.9 was rejected against which the respondent No.9 preferred Second Appeal No. 117 of 2013 before this Court and same was dismissed for want of prosecution vide order dated 23-4-2018 (Annexure P/1). Thereafter, the petitioner filed an execution case for getting possession before the Executing Court and the Executing Court after proceeding the in accordance with law delivered the possession of the aforesaid suit land to the petitioner. In the meanwhile, respondent No.9 filed an Misc. Civil Case for restoration of Second Appeal which was restored. Thereafter, the petitioner after getting possession of the said land, sowed the paddy crop, sugarcane crop but the respondents No. 4 to 9 have been stealing the crop since 2018. The petitioner made several complaints before the Police Authorities on 12-12-2018, 20-7-2019 and 23-11-2019, but the Police authorities have not registered the FIR against respondents No. 4 to 9.
3. On the above factual matrix of the case, the petitioner prayed for registration of FIR against respondents No. 4 to 9 which he has mentioned in reliefs clause 10.1 and 10.2 which read as under:

“10.1. That this Hon'ble court may kindly be pleased to issue writ of mandamus

commanding the respondents No.1 to 3 to register FIR against the respondents No. 4 to 9 on the basis of the complaint of the petitioner and proceed further in accordance with the provisions of criminal procedure code.

10.2. That this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner”.

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 respondents No. 4 to 9 for committing the aforesaid offence
5. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**¹, 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 Yashwant Dhage** and **M. Subramaniam & another Vs. S. Janaki & another**².
6. Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file 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 will follow the procedure prescribed under the provisions of the Cr.P.C.
7. 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.

¹ (2008) 2 SCC 409

² (2020) 16 SCC 728

8. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Raju