

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 373 of 2020**

- Mrs. S. Khanna W/o Shri Shyam Singh Khanna Aged About 36 Years R/o G - 18, Police Lines, District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Ministry Of Home Affairs, New Raipur, District Raipur, Chhattisgarh.
2. Director General of Police Police Head Quarters, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Inspector General of Police Police Head Quarters, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Superintendent of Police District Korba, Chhattisgarh.
5. Rajesh Jangde Station House Officer, Rampur, District Korba, Chhattisgarh.
6. Sanjay Sahu Revenue Inspector, Police Lines. District Korba, Chhattisgarh.
7. Alpesh Khandekar S/o Ashok Khandekar R/o - G-16, Police Lines, District Korba, Chhattisgarh.

---- Respondents

For Petitioner : Shri Anoop Majumdar and Shri Saket Pandey, Advocates
 For Respondent/State : Shri Devendra Pratap Singh, Dy. Advocate General.

Hon'ble Shri Justice Narendra Kumar Vyas, Judge
Order on Board

16.08.2021

1. The Petitioner has filed this petition under Article 226 of the Constitution of India mainly contending that she is residing in the official accommodation *i.e.* Quarter No. G-18 at Police Lines, Korba, allotted to her husband, Shyam Singh Khanna, Assistant Sub Inspector in the Police Department. The Quarter No. G-16 has been allotted to one Ashok Khandekar, Assistant Sub Inspector of Police who is residing with his family. Respondent No. 7 is the son of Ashok Khandekar. It has been further contended by the learned counsel for the Petitioner that the Quarter No. G-18 was arbitrarily allotted

by the Reserve Inspector i.e. Respondent No. 6-Sanjay Sahu to one Krishna Rathore, Assistant Sub Inspector of Police. The Petitioner's husband made a complaint to the Superintendent of Police, Korba. Considering the complaint made by the Petitioner's husband, the Superintendent of Police has directed the Petitioner to live in the said official accommodation i.e. Quarter No.G-18. This was annoyed to the Respondents No.5 to 7. Thereafter, the said Respondent No. 7 has started threatening and intimidating the Petitioner and her family, and always made an attempt to disturb the peace and tranquility of the family of the Petitioner.

2. The Petitioner has filed a complaint to the Superintendent of Police on 24.07.2020 wherein it has been contended that Respondent No.7 had forcefully entered into her house and made an attempt to commit rape on her. When she called her children, they came into the hall thereafter, Respondent No. 7, on seeing her children, left the place of occurrence and thereafter she submitted the report before police station on 23.07.2020. Again, she filed another complaint on 12.08.2020. It has been contended by the learned counsel for the Petitioner that the Respondent No. 7 has also filed a complaint which was inquired by the police as it is evident from Annexure R/2 report dated 19.08.2020 submitted by the Inspector Reserve, District – Korba, before finalizing the report. The statements of Shri K.K Rathore and Smt. Gayatri Verma have also been recorded and on the basis of their statements, the report (Annexure R/2) has been prepared, but police has not investigated on the complaint made by the Petitioner.
3. In view of the above factual matrix, learned counsel for the Petitioner would submit that FIR must be registered under Sections 376, 511, 354, 120B, 34, 506B of the Indian Penal Code against the Respondents No. 5 to 7. She has also prayed for conducting departmental enquiry against the Respondent No. 6.

4. The learned counsel for the State has filed their return in which it is stated that as per the allegations made by the Petitioner against the Respondents No. 5 to 7, notice was issued by the Deputy Superintendent of Police, District - Korba for appearance of the Petitioner to record her statement on 04.09.2020 but the Petitioner did not appear on the ground of her ill health.
5. The learned counsel for the Petitioner has filed rejoinder on 24.03.2021 contending that the Petitioner and her family have been subjected to atrocities by the high officials of the Police Department. Though the husband of the Petitioner is working in the Police Department, but his rank is lower than that of Respondents No. 5 and 6, therefore, her family is being harassed. He would further submit that due to personal difficulty, the Petitioner could not appear on 04.09.2020 and she should have been given one more opportunity to appear before the Superintendent of Police for recording her statement.
6. These are the disputed questions of facts which cannot be examined in this petition under Article 226 of the Constitution of India. The law is well settled that the disputed facts cannot be inquired into by the writ court while hearing petition under Article 226 of the Constitution of India. From perusal of reliefs sought, it is quite clear that the Petitioner wants that on the basis of her complaint, FIR should be registered against Respondent No. 7- Aplesh Khandekar.
7. 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 156(3) or 200 of the Cr.P.C. The Supreme Court has again considered and decided the issue in

¹ (2008) 2 SCC 409

***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage*² and M. Subramaniam & another Vs. S. Janaki & another**³.

8. 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 granting liberty to the Petitioner to file complaint under Section 156 (3) or 200 of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence and in turn, the Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.
9. It is made clear that this Court has not expressed any opinion on merits of the case as to whether the complaint discloses commission of any criminal offence.
10. In view of the above, the writ petition stands disposed off with liberty to file a compliant before the concerned Magistrate under Section 156 (3) or 200 of the CrPC.
11. With these observations, the writ petition is finally disposed off.

Sd/-
(Narendra Kumar Vyas)
Judge

Hem

² (2016) 6 SCC 277

³ (2020) 16 SCC 728