

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 520 of 2021

Cholishwari @ Jyoti Vaishnav, W/o Late Rekhraj Dhruv, Aged about 38 years, R/o Deendayal Colony, Khokhrabhata Janjgir, P.S. - Janjgir, District – Janjgir Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through – The Secretary, Ministry of Home Affairs, Mantralaya, Atal Nagar, Naya Raipur, District Raipur (C.G.).
2. The Director General of Police, Police Headquarter, Raipur, District – Raipur (C.G.).
3. The Superintendent of Police, Janjgir Champa, District- Janjgir Champa (C.G.).
4. The Inspector Incharge, Police Station Janjgir, District – Janjgir Champa (C.G.).
5. The Branch Manager, Manapooram Gold Loan Financial Limited, Branch Barpali Chowk, Champa, District – Janjgir Champa (C.G.).
6. Deepmala Choubey, W/o Damodhar Choubey.
7. Manish Vaishnav, S/o Rajendra Vaishnav,
Respondent No. 6 & 7 are R/o Malhar, P.S. - Masturi, District – Bilaspur (C.G.)

---- Respondents

For Petitioner	: Mr. Vikash Kumar Pandey, Advocate.
For State/Res. No. 1 to 4	: Mr. Rakesh Sahu, Dy. G. A.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

16.08.2021

1. The petitioner has filed present writ petitioner under Article 226 of the Constitution of India contended that the respondent No. 6 & 7 have done criminal conspiracy and caused monetary loss to the petitioner. It has been further contended by the petitioner that respondent No. 6 is the aunt of the petitioner and is a widow lady and respondent No. 7 is relative of the petitioner. Respondents

No. 6 & 7 are the brother and sister and they came to the petitioner and said that they are going to attend the marriage party in the month of June, 2019, therefore the Jewellery, which was kept by the petitioner, given to them and after coming back, they will return the same to the petitioner. But despite the promise, they did not return the jewellery to the petitioner, as such she has made a complaint before the Police Station – Janjgir-Champa, respondent No. 4 herein, on 04.01.2020 but respondent No. 4 has not taken any action on the complaint made by the petitioner.

2. Learned counsel petitioner would further submit that petitioner has submitted a complaint before the Police Station, Janjgir-Champa for criminal conspiracy and causing monetary loss to the petitioner but the police without proper investigation on the complaint made by the petitioner has concluded the proceeding under Section 155 of Cr.P.C. and held that the offence is not cognizable by the police which is *prima facie* illegal.
3. On above factual matrix the petitioner has prayed for following reliefs :-
 - “(i) That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the instant case.
 - (ii) That, this Hon'ble Court may kindly be pleased to direct the respondent No. 4 to lodge complaint against respondent No. 6 & 7 and return the ornaments from the custody of respondent No. 5.
 - (iii) That, this Hon'ble Court may kindly be pleased to issue any suitable writ, order direction directing the respondents to take immediate action against the respondent No. 6 & 7.
 - (iv) Any other relief may also deem fit in the facts and circumstances of the case.”
4. From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of complaint made by her, FIR should be registered against respondents No. 6 & 7.
5. In the matter of **Sakiri Vasu Vs. State of Uttar Pradesh &**

others¹, their Lordships of the Supreme Court 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 156(3) of the Cr.P.C. The Supreme Court has again considered and decided the issue in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage***² and ***M. Subramaniam & another Vs. S. Janaki & another***³.

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 or 156 (3) 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.
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

Amita

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

³ (2020) 16 SCC 728