

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 391 of 2019

- Smt. Mamta Rathore W/o Shri Brajesh Kumar Rathore Aged About 33 Years R/o New Santi Chowk, Masturi, Tahsil Masturi, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Post Office Rakhi, New Raipur, District Raipur Chhattisgarh.
2. Superintendent Of Police Bilaspur, District Bilaspur, Chhattisgarh.
3. Inspector General Of Police Bilaspur, Division Bilaspur Chhattisgarh.
4. Station House Officer, Police Station Mahila Thana, Bilaspur District Bilaspur Chhattisgarh.
5. Brajesh Kumar Rathore S/o Shiv Kumar Rathore Aged About 35 Years R/o Village Gataura, Police Station Masturi, District Bilaspur Chhattisgarh. Presently Residing At Rajendra Nagar, Police Station Civil Line Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Shri Atul Kumar Kesharwani, Advocate
For State : Shri Hariom Rai, Panel Lawyer
For Respondent No. 5 : Shri Chandresh Bajpai, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

16.07.2021

1. The petitioner has filed this writ petition (Cr) under Article 226 of the Constitution of India challenging the improper and faulty investigation in Crime No. 03/2019 lodged at Police Station – Mahila Thana, District – Bilaspur (C.G.).
2. Learned counsel for the petitioner would submit that on the basis of complaint FIR (Annexure P-3) has been registered under Section 498-A of the IPC on 22.01.2019 whereas on the basis of contents of complaint, FIR under Section 494 IPC also should

have been registered.

3. The petitioner has filed copy of the final report which has been submitted under Section 173 of Cr.P.C. before the concerned Judicial Magistrate First Class. The final report consist of statement of respondents and other witnesses.
4. Learned counsel for the petitioner would submit that on the basis of the evidence collected during trial, offence under Section 494 should have also been registered against respondent No. 5.
5. On the other hand learned counsel for the respondents oppose the submission.
6. Learned counsel for the petitioner would place reliance upon the Judgment of Hon'ble Supreme Court in case of **Ushaben vs. Kishorbhai Chunilal Talpada and Others**¹ and would refer paragraph No. 19 of the judgment which is extracted below:-

“19. Upshot of the above discussion is that, no fetters can be put on the police preventing them from investigating the complaint which alleges offence under Section 498A of the IPC and also offence under Section 494 of the IPC. In the circumstances, the appeal must succeed. The impugned order is set aside. Obviously, therefore, the direction to delete Section 494 of the IPC is set aside. The police shall investigate the complaint in accordance with law.”

7. On perusal of the judgment **Ushaben (supra)** passed by the Hon'ble Supreme Court, considering the facts mentioned in the judgment and considering the facts of the present case it is observed that at present no charge under Section 494 IPC has been levelled against respondent No. 5 and the final report has also been submitted before the Judicial Magistrate First Class. Therefore, the petitioner can very well take resort to Section 216 Cr.P.C. for alteration of charges.
8. Section 216 of the Cr.P.C. is extracted below:-

“**216. Court may alter charge.**-(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the

1 (2012) 6 SCC 353

opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

9. Invoking of extra judicial writ jurisdiction under Article 226 of the Constitution of India is not permissible when the petitioner already has alternative efficacious remedy of filing suitable application before the concerned Magistrate for alteration of the charges under Section 216 Cr.P.C.
10. Considering the fact that the petitioner has alternate efficacious remedy of filing suitable application before the concerned Magistrate for alteration of the charges under Section 216 Cr.P.C., this Court is of the view that this writ petition is not maintainable.
11. It is directed that if any application is filed by the petitioner before the learned Judicial Magistrate First Class for alteration of charges, the trial Court will decide the same in accordance with law, considering the materials available on record, without being influenced by any of the observations made by this Court while considering this petition.
12. Consequently, the writ petition is hereby disposed off with liberty as aforesaid granted in favour of the petitioner.

Sd-
(Narendra Kumar Vyas)
Judge