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HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 388 of 2019

Smt. Keshri Devi Sahu W/o Shri Lalit Kumar Sahu, age about 38 years,
R/o H. No. 52/300 Navdurga Nagar, Mathpurena, Police Station-
Tikrapara, Tahsil & District- Raipur (Chhattigarh).

---- Petitioner

Versus

1. State of Chhattisgarh Through- Superintendent of Police, District- Raipur (Chhattisgarh).
2. Station House Officer Police Station- Tikrapara, District- Raipur (Chhattisgarh).
3. Rajveer Sidhu Branch Manager, India Info Line Housing Finance Limited, 1st Floor Lal Ganga City Maart, Banjari Chowk, Opp. Hotel Amit Regency, District- Raipur (Chhattisgarh).
4. Vivek Thapa, Area Manager, Chhattisgarh & Madhya Pradesh India Info Line Housing Finance Limited, 1st Floor, Lal Ganga City Mart, Banjari Chowk, Opp. Hotel Amit Regency, District- Raipur (Chhattisgarh).

---- Respondents

For Petitioner	: Mr. Bhupendra Kumar Pandey, Advocate
For State	: Mr. Sudeep Verma, Dy. G. A.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

24.06.2021

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India against in-action on the part of the respondents No. 1 & 2 for not lodging the FIR against the respondents No. 3 & 4.
2. The brief facts as projected by the petitioner are that the petitioner has applied for housing loan of Rs. 12,49, 587/- from India Info Line Housing Finance Limited, Branch Lal Ganga City Mart, Raipur. The said loan was sanctioned on 23.10.2015 and

as per sanction letter, the loan period is 180 months. For the said loan, the Authority has fixed monthly EMI of Rs. 13,057/-. She was regularly depositing EMI of the said Loan. Subsequently, she applied for enhancement of loan and the said India Info Line Housing Finance Limited, Branch Lal Ganga City Mart, Raipur has considered her request and enhanced the loan amount to Rs. 33,11,286/-. As per the sanctioned letter, the loan period is 180 months. After enhancing the loan amount, the monthly EMI has now been fixed at Rs. 39,741/-. Thus, the petitioner has taken total loan of amount of Rs.46,56,247/- from India Info Line Housing Finance Limited, Branch Lal Ganga City Mart, Raipur. The petitioner was depositing EMI regularly, but all of a sudden her husband met with an accident due to the said accident, he seriously injured, which was caused delay in depositing the monthly EMI. The Bank initiated proceeding before the Collector, Raipur for taking possession of mortgage property. The petitioner submitted objection on 31.07.2018 narrating her difficulty to deposit the EMI.

3. On 26th and 27th May, 2018, the petitioner and her husband were out of their residence, the respondents Nos. 3 & 4 have taken all the household things including books of her children, jewelery and bike. The above highhanded action of respondents 1 & 2/Bank is illegal and not just and proper in the eye of law. The petitioner has submitted an application before – Superintendent of Police, Raipur, respondent No. 1 herein to take action against them mentioning all the misdeed committed by the respondent Nos. 4 & 5. The petitioner has also mentioned that she is ready and willing to pay Rs. 37 lakhs in one installment. The act committed by the respondent Nos. 4 & 5 come under the purview of Section 452 of IPC. Despite the complaint made by the petitioner, no action has been taken by the respondent No. 1/Superintendent of Police, Raipur.
4. The Respondent Nos. 1 & 2 have filed the return in which they have raised objection about maintainability of the petition and

would submit that the petitioner has an alternative remedy of filing complaint under Section 200 of Cr.P.C. therefore, the writ petition is not maintainable. On above factual matrix the petitioner has prayed for following relief sought:

“10.1 Hon'ble Court may kindly be pleased to call for the entire record.

10.2 Hon'ble Court may kindly be pleased to issue an appropriate writ by directing respondent Nos. 1 & 2 to take necessary step on complaint of petitioner according to the law laid down by Hon'ble Court in the case of Lalita Kumar Vs. State of Uttar Pradesh in the interest of justice.

10.3 Any other relief as deemed fit by this Hon'ble Court.”

5. From perusal of reliefs sought, it is quite clear that the petitioner wants to lodge the FIR against respondent No. 3- Rajveen Sidhu & respondent No. 4- Vivek Thampa, Area Manager, Chhattisgarh & Madhya Pradesh, India Info Line Housing Finance Limited.
6. 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**² and **M. Subramaniam & another Vs. S. Janaki & another**³.
7. 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 (supra_, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

³ (2020) 16 SCC 728

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.

8. It is made clear that this Court has not expressed any opinion on merits of the case i.e. whether the complaint discloses any criminal offence or not.
9. 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