

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 440 of 2020

- Pradeep Saraf S/o Late Kunj Bihari Saraf Aged About 64 Years
R/o Tahsil Road Champa Police Station Champa District Janjgir
Champa Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home, Mantralay Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Director General Of Police, Police Head Quarter, Atal Nagar District Raipur Chhattisgarh.
3. Inspector General Of Police Civil Line Bilaspur District Bilaspur Chhattisgarh.
4. Superintendent Of Police Janjgir Champa, District Janjgir Champa Chhattisgarh.
5. Deputy Superintendent Of Police / Sub Divisional Officer Of Police Champa District Janjgir Champa Chhattisgarh.
6. Station House Officer P.S. Champa, District Janjgir Champa Chhattisgarh.
7. Ashok Tambi Aged About 56 Years R/o 146, Burns Plot Near Raniganj Bus Stand P.S. Raniganj District Burdwan (West Bengal) 713347 (Father Name Not Known To Petitioner)
8. Neelam Tambi W/o Ashok Tambi Aged About 52 Years R/o 146, Burns Plot Near Raniganj Bus Stand P.S. Raniganj District Burdwan (West Bengal) 713347.
9. Jayanti Jyoti Aged About 53 Years R/o 146, Burns Plot Near Raniganj Bus Stand P.S. Raniganj District Burdwan (West Bengal) 713347 (Father Name Is Not Known To Petitioner).

---- Respondents

For Petitioner	:	Mr. F.S. Khare, Advocate.
For State	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

19.08.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India for direction to respondent police authorities to register FIR against respondents No. 7 to 9 on basis of complaint filed by him.
2. The brief facts as projected by the petitioner are that the petitioner is residing at Champa and respondents No. 7 to 9 are residing at Raniganj District – Burdwan (W.B.) and they are familiar with each other. It is contended that respondents No. 7 to 9 have taken Rs. 5,00,000/- from him on 10.08.2017 for giving him franchise of business. But, even after lapse of around 2.5 years neither money has been returned nor franchise of the business has been given, therefore, he has made a written complaint before the police station- Champa on 19.03.2020, but no action has been taken on his complaint. Thereafter, on 19.06.2020, he again made written complaint before respondent No. 4/ Superintendent of Police, Janjgir-Champa but no action has been taken by him.
3. Learned counsel for the State would submit that the matter has been investigated and on the examination of some witnesses and other evidence, the police authorities have found that the matter is purely civil in nature as the petitioner has voluntarily given the amount to respondents No. 7 to 9.
4. On the basis of factual matrix of the case, the petitioner has prayed for following reliefs:-
 - 10.1 That, this Hon'ble Court may kindly be pleased to issue writ of mandamus commanding the respondent No. 2 and 6 to register FIR against the respondents No. 7 to 9 on the basis of the complaint of the petitioner and proceed further in accordance with the provision 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.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deem fit.

5. 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. 7 to 9.
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, 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 Sections 200 of the Cr.P.C. 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.
8. 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.
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

Deshmukh

¹ (2008) 2 SCC 409
² (2016) 6 SCC 277
³ (2020) 16 SCC 728