

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 427 of 2018

- Mukesh Murarka S/o Late Shri Nathmal Murarka, Aged About 45 Years R/o Main Road C/o Murarka Petrol Pump, Power House Road Korba , Police Station Kotwali Korba Tahsil And District Korba Chhattisgarh.,

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Home Department Mahanadi Bhawan Mantralaya New Raipur District Raipur Chhattisgarh.,
2. Superintendent Of Police , Korba District Korba Chhattisgarh.,
3. Station House Officer, Police Station City Kotwali Korba District Korba Chhattisgarh.,
4. Rajesh Murarka S/o Late Nathmal Murarka Aged About 52 Years R/o Near Railway Crossing Main Road Korba District Korba Chhattisgarh.,

---- Respondents

For Petitioner	:	Mr. Aashutosh Shukla, Advocate.
For State/Res. No. 1 to 3	:	Mr. Vinod Tekam, P. L.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

28.07.2021

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India for direction the respondents No.2 and 3 to register offence against respondent No. 4.
2. The brief facts as projected by the petitioner are that the petitioner is younger brother of respondent No.4. The dispute is with regard to the ancestral property between brothers. The respondent No.4 has misbehaved with mother Rampyari Murarka who is aged about 80 years and he made complaint on 31.03.2018 and 04.04.2018 but police has not taken any action against respondent No.4.
3. On above factual matrix, the petitioner has filed the present writ petition and prays for following relief(s):-

- (10.1) That, the Hon'ble Court may kindly be pleased to allow the writ petition and be pleased to direct the respondent No.2 and 3 to register the cognizance offence against the respondent No.4 according to the direction given by Hon'ble Supreme Court in the matter of Lalita Kumari Vs. Govt. of U.P. and others, 2014(2)SCC1.
- (10.2) That, the Hon'ble Court may kindly be pleased to call for the entire records.
- (10.3) Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favour of the petitioner together with cost of the petition.
4. From perusal of reliefs sought, it is crystal clear that FIR should be registered against respondent No. 4- Rajesh Murarka.
5. 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.
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 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.

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

³ (2020) 16 SCC 728

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**

parul