

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 295 of 2015

Anoop Waswani, S/o Late Amar Waswani, Aged About 35 Years, R/o Inside Bhakta Kanwar Ram Gate, Sindhi Colony, Jarhabhata, Bilaspur, Civil & Revenue District- Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home, Mantralaya Bhawan, New Raipur (C.G.)
2. Superintendent of Police, District- Bilaspur (C.G.)
3. The Station House Officer, Police Station- Civil Lines, Bilaspur (C.G.)
4. Shri Q.A. Khan, Sub Divisional Magistrate, Bilaspur (C.G.)
5. Shri Narendra Banjara, Additional Tahsildar, Bilaspur (C.G.)
6. Smt. Sandhya Namdev, Patwari, Patwari Halka No. 21, R.I. Circle Bilaspur, Tahsil- Bilaspur, District- Bilaspur (C.G.)
7. Ratnesh Jaiswal, S/o Late Ramesh Kumar Jaiswal, Aged About 45 Years, R/o A-32, Vasundhra Nagar, Ring Road No. 2, Bilaspur, District- Bilaspur (C.G.)

---- Respondents

For Petitioner : Mr. Ratnesh Agrawal, Advocate.
For State/res. No. 1 to 3 : Mr. Kapil Maini, Panel Lawyer.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

08.09.2021

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India for following relief:-
 - 10.1 The Hon'ble Court may kindly be pleased to issue appropriate writ/writs, direction/directions, order/orders and to direct the Respondent No. 3 to register the F.I.R. against the Respondent No. 4 to 7 for their illegal act of criminal conspiracy, Public servant disobeying the law with intent to caused injury to the person, mischief, lurking house trespass after prepration for hurt, assault and wrongful restraint, dishonestly breaking open the receptacle containing property and also for forgery and cheating and to investigate into the matter.
 - 10.2 That, this Hon'ble Court be pleased to direct an enquiry to fix the liability of the erring officers responsible for the illegal and inhuman act of

demolishing the shop of the petitioner and depriving him from his livelihood.

- 10.3 That, the Hon'ble Court be pleased to grant suitable compensation to the petitioner which this Hon'ble Court deems fit and proper under the facts and circumstances of the case.
 - 10.4 The Hon'ble Court further kindly be pleased to call for the entire records of the case of the petitioner for kind perusal.
 - 10.5 Any other relief, which the Hon'ble Court deems looking to the facts and circumstances of the case, may also be granted to the petitioner."
2. The brief facts as projected by the petitioner are that in the year 1967-68, brother of the petitioner- Nandlal had taken an open plot admeasuring 345 sq.ft. on rent from owner-Madan Mohan Mitra situated at Khasra No. 316/34, Mohalla Kududand, Tahsil & District-Bilaspur. With permission of the owner, the petitioner has constructed a shop there on his own expenses and started hotel business. On 21.02.1973, a suit for eviction and arrears of rent was filed by owner- Madan Mohan Mitra against brother of the petitioner- Nandlal, which was partly decreed in favour of the plaintiff- Madan Mohan Mitra and only arrears of rent part has been decreed in favour of the landlord and rest of the claim i.e. eviction part has been dismissed by the learned First Civil Judge Class-II, Bilaspur in Civil Suit No. 12-A/1972. The owner of the land preferred an appeal which was dismissed by the trial Court which clearly establishes that the petitioner was remained in possession of the rented plot.
 3. Learned counsel for the petitioner would submit that in the year 1989-90, family dispute between family members of the petitioner, which came into litigation and ultimately the litigation was ended by compromise between the parties. In the year 1992, Civil Suit No. 39-A/1992 was filed by one Prem Chandra who was occupant of shop of Bus Stand Bilaspur against the petitioner for permanent injunction, which was come to an end with the compromise vide order dated 17.11.1992 passed by Third Civil Judge, Class-II, Bilaspur, as such, shop/hotel business has come in share of the petitioner because from its beginning, the petitioner was running the shop/ hotel. Since then, the petitioner was running his hotel

business there peacefully and earning his livelihood. All of sudden, on 10.10.2015 in morning at about 9-10 a.m., when the petitioner was not there and shop was closed, respondent No. 7 came there armed with Iron Rod along with respondent No. 5 & 6 and their 10-12 labourers armed with spade, shovel, crow bar etc. with intention to cause hurt to the petitioner and the persons raising objection and started breaking open the lock of the shop of the petitioner without any prior notice. They open the shop by breaking lock of the shop. At that time, the petitioner was busy in his family function and the shop was closed on that day. As soon as, the petitioner was informed by the people of vicinity, he reached to his shop and found that the shop/hotel of the petitioner is completely demolished by them and articles of the shop, utensils, furnitures are thrown out from the shop.

4. The petitioner enquired about the matter, then he found that a sale-deed has been executed in favour of respondent No. 7 by Smt. Isha Rani Mitra in the year 2012. In the year 2013, respondent No. 7 filed an application under Section 133 of the Cr.P.C. before Sub-Divisional Magistrate, Bilaspur showing that in Khasra No. 316/34 area admeasuring 1300 sq.ft. out of total 1800 sq.ft., the construction was very old and is likely to fall and thereby may cause injury to the person passing from there. On 27.09.2013, the Sub-Divisional Magistrate, Bilaspur granted permission to demolish the construction without there being any proper enquiry and with collusion of respondent No. 7. Respondent No. 7 did not act upon order passed by the Sub-Divisional Magistrate till 2015 and never approached to the shop for dismantling it on his own expenses or his own process. On 23.09.2015, he moved another application before the Sub-Divisional Magistrate for execution of his earlier application dated 27.09.2013, in which, Sub-Divisional Magistrate directed Tahsildar, Bilaspur to execute the order and also to submit compliance report. In execution of the order, the shop of the petitioner is demolished on 10.10.2015 by and in collusion of respondent No. 4 to 7.
5. He would further submit that the petitioner preferred a complaint under Section 155 of the Cr.P.C. on 10.10.2015 before In-charge

Police Station- Civil Lines, Bilaspur forwarding copy to Collector, Bilaspur, Inspector General of Police, Bilaspur Range and Superintendent of Police, Bilaspur, with regard to the illegality committed by respondent No. 7 and also stated that on basis of complaint made by him, enquiry may be conducted against the accused persons, but no action has been taken on his complaint and it was advised to get shelter of this Court. Hence, it is prayed that this petition may kindly be allowed and relief may also be granted to the petitioner.

6. Learned counsel for the petitioner would also pray for grant of compensation as mentioned in the relief clause. He also prays that the trial Court may also be directed for expeditious trial of the case as the incident took place in the year 2015 and six years have already been lapsed.
7. From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of complaint under Section 155 of the Cr.P.C., FIR should be registered against respondent No. 4- Q.A. Khan, respondent No. 5- Narendra Banjara, respondent No. 6- Smt. Sandhya Namdev & respondent No. 7- Ratnesh Jaiswal.
8. 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.
9. 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

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277

³ (2020) 16 SCC 728

prescribed under the provisions of the Cr.P.C.

10. 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.
11. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner. Learned trial Court is directed to expedite the proceeding and dispose of the case as early as possible.

Sd/-
(Narendra Kumar Vyas)
Judge

Arun