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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 09-08.2021

Pronounced on : 01-11-.2021

CRMP No. 75 of 2016

1. Arjun Pasawan S/o Shiv Sagar Aged About 50 Years R/o Mastipur Piparpati, Police Station -Bodhgaya, District Gaya, Bihar Present R/o Ram Singh Nagvanshi, Near Tamrakar Vessel Shop Near Over Bridge Khairagarh Road Rajnandgaon, Police Station Kotwali, Rajnandgaon, District Civil And Rev. District Rajnandgaon Chhattisgarh. , Chhattisgarh
2. Narendra Singh @ Tinku Bhatia S/o Late Surjeet Singh Bhatia Aged About 47 Years R/o Kailash Nagar Ward No. 27, Rajnandgaon, Police Station Rajnandgaon, Civil And Rev. District Rajnandgaon Chhattisgarh. , District : Rajnandgaon, Chhattisgarh

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Versus

1. State of Chhattisgarh Through Secretary, Department Of Home Mahanadi Bhavan Near Raipur, Distt. Raipur Chhattisgarh. , Chhattisgarh
2. State of Chhattisgarh Through Secretary, Department Of Home Mahanadi Bhavan Near Raipur, District Raipur Chhattisgarh. , District : Raipur, Chhattisgarh
3. Nilesh Patel S/o Late Harihar Bhai Patel Aged About 51 Years R/o Near Sagar Complex Durg, Police Station Durg, Civil And Rev. Distt. Durg Chhattisgarh. , District : Durg, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. K.A. Ansvari, Sr. Advocate with Mr. Aman Ansvari, Advocate.
For Respondent/State	:	Mr. Devendra Pratap Singh, Dy. AG.
For respondent No.3	:	Mr. P.S. Baghel, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioners have filed this petition under Section 482 of Cr.P.C., for quashing FIR dated 8-1-2015, charge sheet and

proceedings of Criminal Case No. 2431 of 2015 pending in the Court of Chief Judicial Magistrate, Rajnandgaon.

2. The brief facts, as projected by the petitioners are that the petitioner No.2 in possession of nazul plot No. 449 sq. meter (4000 sq. feet 22" x 200") since the time of his forefathers. This fact was admitted by the father of the respondent No.3 in proceedings before the Assistant Land Measurement Officer and Superintendent of Land Records (Nazul) in proceedings of Revenue Case No. 1601/1602/A/20 (1)/1977-78,) in which statement on oath of Harihar Bhai s/o. Chhunni Bhail Patel has been recorded on 12-10-1984. The fact of possession by the father of petitioner No.2 was also mentioned in the report of Land Measurer of Rajnandgaon dated 11-6-1975 wherein Lakkha Singh and Surjeet Singh (father of petitioner No.2) both s/o. Mehtab Singh were shown in possession and copy thereof is annexed as Annexure P/2. Subsequently the matter was settled by the father of respondent No.3 and till his death in the year 2012 no objection was raised. No complaint of encroachment was made to the Police nor was any application with the revenue authority for possession of the land was submitted. Respondent No.3 had migrated to USA long back with his family. He came to India a few days before the death of his father Hari Bhai Patel and since the nazul plot was recorded in the name of his father, he got the same mutated in his name in revenue papers. Neither father of respondent No.3 and respondent No.3 himself was in actual physical possession of the plot nor respondent No.3 had even seen the plot.
3. A few days after the death of his father, respondent No.3 submitted a false complaint on 16-10-2012 to respondent No.2 stating that a councilor of Rajnandgaon Corporation has dumped garbage over his land with a view to occupy the land and also that he has received information from the shop keeps of the area and plot has been leveled by the petitioner No.2 for keeping his

vehicles and to prepare a way over the same. The family of the petitioner No.2 had its own plot behind the plot mentioned above and being in coal business, the trucks carrying coal went through the plot for storage of coal and therefore, plot was duly fenced by wall and iron gate which was in front portion of the plot and char coal was being supplied for agarbatee business, a room was also constructed for Guard by petitioner No.2. The trucks and other materials were also kept by the forefather of petitioner No.2 as well as by the petitioner No.2. Respondent No.2 did not find any encroachment in the plot as alleged in application, therefore, no action was taken by respondent No.2. Respondent No.3 after a period of about 5 months, again submitted a report to respondent No.2 on 3-3-2013 stating that the demarcation of plot has been made on 27-2-2013 and after Panchnama he had put 2 locks on the gate. He further alleged that he went to see his plot on 3-3-2013 and found that "Bhatia Ji" had got lock broken by engaging 2 labourers and kept his Truck No. CG No.04-J 3846 and has fixed another door lock. He also alleged that on the plot garbage (malma) has been put and kept vehicles over it and have lodged their vehicle by breaking open the lock and he requested the respondent No.2 to get his land vacated. On 09-09-2013 respondent No.3 submitted a written report to the Chief Minister of the State again making the same false allegation wherein he mentioned that the Truck No. CG 04 J 3846 has been put in the spot on 3-3-2013. On being report made to Police, the Police personnel went to the plot and brought labour of Ex-councilor to the Police Station. He also alleged that the Ex-councilor did not take out the truck and, therefore, respondent No.3 has put his lock and deposited the papers regarding ownership of plot in Police Station. Respondent No.3 requested that the plot has been unlawfully occupied by the Ex-councilor to take out the material kept over his plot. Since no action has been taken by respondent No.2, respondent No.3 made a complaint No.2 on 4-3-2013 (Annexure P/5) on the basis of which respondent No.3 Police of

Police Station Kotwali, Rajnandgaon registered Crime No. 691 of 2013 on 31-08-2013 against petitioner No.2 for the alleged offence under section 447 of IPC. On 28-12-2013 change sheet was filed and criminal case No. 3033 of 2013 was registered in the court of Chief Judicial Magistrate Rajnandgaon and case having been transferred to Judicial Magistrate First Class, Rajnandgaon is pending as Criminal Case No; 186 of 2014.

4. Learned Sr. Advocate for the petitioners would submit that the disputed land has been continued to be in possession and used by the petitioners. He would further submit that the factum of possession of the petitioners over the said plot was admitted by the father of respondent No.3 on 12-10-1984 and he died in September, 2012. The respondent No.1, who claims to have acquired American citizenship, came to India a few days before death of his father, leaving behind his family in USA tried to usurp the possession of the plot forcibly but having failed to do so he submitted a false complaint on 16-10-2012 stating that the petitioners have trespassed over the land, therefore, he wanted to restore his possession by ousting the petitioners. The police made inquiries and having found that the complaint is not true, they did not take any action, thereafter, respondent No.1 filed another complaint on 3-3-2013 before the Incharge of Police Station, Rajnandgaon and again using his political influence he made a false complaint to the Chief Minister of the State and got it forwarded to the Superintendent of Police, Rajnandgaon to inquire into the matter vide letter dated 4-3-2013. Under the political pressure by respondent No.3, Incharge, Police Station Kotwali, Rajnandgaon, filed Istegasa under Section 145 of Cr.P.C., arraying the respondent No.1 as party No.1 and the petitioner No.1 as party No.2 on 7-1-2014 before the Sub Divisional Magistrate, Rajnandgaon. The preliminary order was passed and thereafter both parties have filed their respective claims and documents in support of their documents. It has been further contented that the Sub Divisional Magistrate found that no

order of restoring of possession of land of respondent No.3 can be passed and proceeding is untenable and therefore, the proceedings were dropped by the Sub Divisional Magistrate, Rajnandgaon. Thereafter, respondent No.3 has filed a complaint on the basis of which FIR of Crime No. 691 of 2013 was registered on 31-8-2013. Charge sheet against the petitioner and the case is pending as criminal case No. 186 of 2014. Thereafter, the respondent No.3 filed Writ Petition (Cr) No. 98 of 2013 which is still pending. He would further submit that the act of respondent No.2 in registering the offence and filing the charge sheet at the instance of respondent No.3 is clearly an abuse of process of law and unjust, therefore, indulgence of the Hon'ble Court vested under Section 482 of Cr.P.C., is necessary to quash the FIR No. 24 of 2015, charge-sheet and proceedings of criminal case No. 2431 of 2015 pending before the Chief Judicial Magistrate, Rajnandgaon.

5. The respondent No.3 has not filed his return but would submit that there is no illegality committed by the Court below in initiating the criminal proceedings against the petitioners. The facts which have been projected by the petitioners can be adjudicated in the trial and it is not appropriate for this court to adjudicate the point raised in this petition at this stage. The present petition is premature at this stage, therefore, it is not maintainable and the same is liable to be dismissed.
6. I have heard learned counsel for the parties and perused the record.
7. From bare perusal of the complaint and averments made in the petition, it is crystal clear that the disputed facts are involved. The contents made in the petition are defence of the petitioner which cannot be adjudicated by this court while hearing the petition under Section 482 of Cr.P.C. as held by Hon'ble the

Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh & others¹, wherein it has been as under:-

“9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under [Section 482](#) Cr.P.C. has quashed the criminal proceedings for the offences under [Sections 147, 148, 149, 406, 329](#) and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under [Section 482](#) Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under [Sections 147, 148, 149, 406, 329](#) and [386](#) of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/ inquiry and even the statements recorded. If the petition under [Section 482](#) Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of ***Dineshbhai Chandubhai Patel*** (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like

1 Criminal Appeal No. 787 of 2021 (decided on 13.08.2021)

the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of ***Dhruvaram Murlidhar Sonar*** (Supra) after considering the decisions of this Court in ***Bhajan Lal*** (Supra), it is held by this Court that exercise of powers under [Section 482](#) Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under [Section 482](#) Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under [Section 482](#) Cr.P.C. Similar view has been expressed by this Court in the case of ***Arvind Khanna*** (Supra), ***Managipet*** (Supra) and in the case of ***XYZ*** (Supra), referred to herein-above.

9.3 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.”

8. Since the disputed facts are involved and the stand taken by the petitioners, may be their defence which cannot be adjudicated by this court. Thus, considering all the facts and circumstances of the case, I am of the opinion that the court below has not

committed any illegality in registering FIR and initiation of criminal proceedings as against the petitioner. Therefore, present CRMP is liable to be dismissed.

9. This Court has not given any finding with regard to the merits of the matter or whether the offence has been made out against the petitioners or not. The facts and material have been examined for considering the contention raised in the petition and counter by the respondents only. The learned trial Court will decide the trial without being influenced from any observation made by this Court while deciding the present CRMP in accordance with law and material placed on record during trial by the parties.
10. In view of what has been discussed above the instant petition is dismissed. No order as to cost.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju