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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.406 of 2013

Smt. Chetna Surana, aged about 52 years, W/o Shri Anand Surana, R/o Nanesh Kripa, Civil Lines, Raipur, Police Station Civil Lines, Raipur, Tahsil and District Raipur (C.G.), Revenue Distt. Raipur

---- Petitioner

Versus

State of Chhattisgarh, through the District Magistrate, Raipur.

---- Respondent

For Petitioner:	Mr. Praveen Das, Advocate.
For Respondent/State:	Mr. Chandresh Shrivastava, Deputy Advocate General and Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/06/2019

1. The petitioner herein made a complaint to the Senior Superintendent of Police, Raipur, on 23-9-2005 that she purchased the suit property bearing Khasra Nos.257/581, 257/584 and 258/225, total area 2.101 hectares from M/s. Natural Estates on 29-5-2003 by registered sale deed and got it mutated in the revenue records, but the accused persons therein namely Harsh Kumar Jain, Rajendra Kumar Jain, Premraj Jain and D.P. Gandhi, on the basis of false affidavit, got it recorded in the name of M/s. Natural Estates and thereby committed the offence, therefore, criminal case be registered against them and they be punished. The Station House Officer, Police Station Gol Bazaar, Raipur registered the offence under Sections 420, 467, 468 and 471 read with Section 34 of the IPC against them and investigated the matter and thereafter, submitted closure report on 14-7-2008 before the Chief Judicial

Magistrate, Raipur / jurisdictional criminal court. The said court after hearing the concerned, came to a specific conclusion that no offences have been committed by the accused therein, as Civil Suit No.88A/2005 filed by the petitioner is pending consideration and there is no reasonable ground for proceeding further on the basis of first information report so lodged and accordingly, the Chief Judicial Magistrate did not take cognizance of the offence and discharged the accused persons therein.

2. Feeling aggrieved against that order, the petitioner herein preferred Criminal Revision No.244/2008 in the Court of First Additional Sessions Judge, Raipur which was dismissed by the learned Additional Sessions Judge on 4-11-2009 affirming the order passed by the learned Chief Judicial Magistrate. In the meanwhile, the Station House Officer, Police Station Gol Bazaar, Raipur, filed Istegasha No.1/2009 before the Judicial Magistrate First Class, Raipur that the petitioner has deliberately in order to harass the accused therein got the offences registered which has been closed by the jurisdictional criminal court and the report / complaint of the petitioner was found untrue and thereby she has committed the offence under Sections 182 & 211 of the IPC. The learned Judicial Magistrate First Class on 9-12-2009 took cognizance of the above-stated offences and issued notice to the petitioner.

3. Thereafter, the petitioner by way of W.P.(Cr.)No.2147/2010 questioned the orders dated 16-9-2008 and 4-11-2009 dismissing the criminal revision and also the order taking cognizance on 9-12-2009, before this Court. This Court by order dated 27-3-2012, affirmed the order of the revisional Court dated 4-11-2009 by which

the closure report has been accepted, but the order taking cognizance dated 9-12-2009 was set aside only on the ground that it does not reflect the application of mind and declined to accept the ground that the criminal complaint is incompetent which was raised on the basis of the provisions contained in Sections 195(1)(a) & (b) of the CrPC and remitted the matter to the Judicial Magistrate First Class for passing fresh order in light of the decision so rendered therein. Thereafter, on 21-9-2012, the learned Judicial Magistrate First Class, Raipur again took cognizance of the offences under Sections 182 & 211 of the IPC against the petitioner which was assailed by the petitioner by way of criminal revision under Section 397 read with Section 399 of the CrPC which was dismissed on 5-3-2013 finding no merit. Now, feeling aggrieved against the order taking cognizance dated 21-9-2012 as well as the revisional order dated 5-3-2013, this petition under Section 482 of the CrPC has been preferred stating that no offences are made out against the petitioner and Istegasha No.1/2009 pending in the Court of Judicial Magistrate First Class, Raipur for offence under Sections 182 & 211 of the IPC deserves to be quashed.

4. No return has been filed despite grant of time to the State / respondent.

5. Mr. Praveen Das, learned counsel for the petitioner, would submit that the complaint as filed by the respondent against the petitioner for offence under Sections 182 & 211 of the IPC is apparently barred by the provisions contained in Sections 195(1)(a)(i) & (b)(i) of the CrPC and no cognizance could have been taken for offence under Section 182 of the IPC without the complaint in writing of the

public servant concerned and cognizance of the offence under Section 211 of the IPC could have been taken except on the complaint in writing of that Court, as the offence is alleged to have been committed in relation to the proceeding for closure said to have been initiated at the instance of the petitioner. Alternatively, he would further submit that the ingredients of offence under Sections 182 & 211 of the IPC are absolutely missing, as apparently, there is a civil dispute instituted by the petitioner in jurisdictional civil court pending consideration and in the istegasha filed, there is no whisper about the ingredients of Sections 182 & 211 of the IPC.

6. Mr. Chandresh Shrivastava, learned Deputy Advocate Genera and Mr. Aakash Pandey, learned Panel Lawyer appearing for the State/ respondent while replying the submissions of learned counsel for the petitioner, would submit as under: -

    1. The issue with regard to the bar based on the provisions contained in Sections 195(1)(a)(i) & (b)(i) of the CrPC had already been negatived by this Court in the earlier round by its order dated 27-3-2012 and as such, that finding has become final and that cannot be allowed to be reopened at the instance of the petitioner, at this stage.

    2. Ingredients of the offence under Sections 182 & 211 of the IPC are available and those are matters of evidence that cannot be gone at this stage in the petition under Section 482 of the CrPC.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the

records with utmost circumspection.

8. Following two questions arise for consideration in this petition: -

    1. Whether, the complaint as framed and filed against the petitioner for offence under Sections 182 & 211 of the IPC is barred by Sections 195(1)(a)(i) & (b)(i) of the CrPC?

    2. Whether, the istegasha filed against the petitioner for offence under Sections 182 & 211 of the IPC deserves to be quashed on the ground that the ingredients of the aforesaid offences are absolutely missing?

Answer to Question No.1: -

9. It is not in dispute that in W.P.(Cr.)No.2147/2010 while assailing the order closing investigation against the accused persons therein, the petitioner also called in question the order dated 9-12-2009 taking cognizance of offence under Sections 182 & 211 of the IPC and took specific defence based on Sections 195(1)(a)(i) & (b)(i) of the CrPC that the complaint is not maintainable in view of the provisions contained in Sections 195(1)(a)(i) & (b)(i) of the CrPC unless the complaint in writing by the public servant or by the court concerned is filed, as the offence is said to have been committed in relation to the closure proceeding which this Court negatived by recording a specific finding in paragraphs 19 and 20 of the order dated 27-3-2012 passed in W.P.(Cr.)No.2147/2010 which speak as under: -

> "19. In view of above, the complaint filed by the S.H.O. under Section 182, 211/34 of the I.P.C. is certainly filed by the "public servant concerned," within the meaning of Section 195(1)(a)(i) of the Cr.P.C. and the Magistrate is legally competent to take cognizance of the offence punishable under Section 182 of the I.P.C. upon the

complaint of the S.H.O. Police Station Gol Bazar, Raipur.

> 20. So far as the complaint under Section 211 of the I.P.C. is concerned, it may be noticed that offence under Section 211 of the I.P.C. has been referred to in clause (b) sub-clause (i) of Section 195(1) of Cr.P.C. The last sentence of Section 195 (b) reads: "except on complaint in writing of that Court or some other Court to which that Court is subordinate." The complaint by Court is needed when "the offence is alleged to have been committed in or in relation to, any proceeding in Court" (vide last part of sub-clause (i) of clause (b). So, where a false charge is made to the Police and not to a Court no sanction under Section 195(b)(i) is needed."

10. The aforesaid finding has become final in absence of successful challenge made by the petitioner by questioning that order in the superior court. As such, the said finding cannot be taken exception to, by the petitioner on the ground of bar contained in Sections 195(1)(a)(i) & (b)(i) of the CrPC. The istegasha / proceeding initiated against the petitioner cannot be quashed. It is held accordingly.

Answer to Question No.2: -

11. Now, the question is whether the offence under Sections 182 & 211 of the IPC are made out against the petitioner?

12. In order to consider the plea, it would be appropriate to notice the provisions contained in Section 182 of the IPC which states as under: -

> "182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—
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> (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

13. From the aforesaid provision, the following are the ingredients of the said offence: -

(i) An information was given by a person to a public servant.

(ii) The information was given by a person who knows or believes such statement to be false.

(iii) Such information was given with an intention to cause or knowing it to be likely to cause (*a*) such public servant to do not to do anything if the true state of facts respecting which such information is given were known by him, or (*b*) to use the lawful power of such public servant to the injury or annoyance of any person.

14. The first leading case on the point is stated in the matter of **Sardar Khan v. Emperor**[1]. In that case, Tek Chand, J., quoted with approval the remarks made by Plowden, J., in the matter of **Murad v. Empress**[2] which is to the following effect: -

"It is not enough to find that he has acted in bad faith, that is, without due care or enquiry, or that he has acted maliciously, or that he had no sufficient reason to believe or did not believe the charge to be true. The actual falsity of the charge, recklessness in acting upon information without testing it, or scrutinising its sources; actual malice towards the persons charged they are relevant evidence more or less cogent; but the ultimate conclusion must be, in order to satisfy the definition of the offence, that the accused knew that there was no just or lawful ground for proceeding. It may be difficult to prove this knowledge, but, however difficult it may be, it must be proved and unless it is proved the informer must be acquitted."

1 AIR 1930 Lahore 54 (1)
2 (1894) 29 PR 1894 Cr

15. Similar is the view taken by the Madras High Court in the matter of **Rayan Hutti v. Emperor**[3] in which it was held as under: -

> "To constitute an offence under Sec. 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false."

16. The aforesaid two decisions of the Lahore High Court and the Madras High Court were also quoted by the Mysore High Court in the matter of **Fakirapa Ningappa Chikkabagewadi v. The State**[4].

17. In the matter of **Santosh Bakshi v. State of Punjab and others**[5], Their Lordships of the Supreme Court have held that in order to make out a case under Section 182 of the IPC, it must be shown that the accused person gave the information which he was knowing and believing to be false, but still gave the information to harass the complainant and observed as under: -

> "16. In the present case, the investigating agency has failed to show that the appellant has given information which she was knowing and believing to be false. In the investigation report it has not been reported that the appellant was knowing that the information given is false but still gave the information to harass Respondent 3.
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> 17. Respondents 1 and 2 having failed to make out a case under Section 182 IPC, we are of the opinion that it was a fit case to quash the proceedings under Section 182 IPC. The High Court failed to notice the relevant facts and mechanically dismissed the application under Section 482 CrPC."

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3 ILR 26 Mad 640
4 AIR 1960 Mysore 208
5 (2014) 13 SCC 25

18. Thus, from a conspectus of the aforesaid authorities, it is quite vivid that under Section 182 of the IPC it is not the law that the accused must prove that the information given by him is true or that he believed it to be true, rather it is for the prosecution to prove satisfactorily that the allegations made by the accused, were false and were false to his knowledge or, at any rate, he did not believe them to be true at the time when he made those allegations.

19. In **Fakirapa Ningappa Chikkabagewadi** (supra), the Mysore High Court has held that the fact that belief of the accused turns out to be a wrong belief, is not sufficient to bring home a conviction under Section 182 of the IPC.

20. Reverting to the facts of the present case in light of the authorities noticed herein-above, it is quite vivid that while filing istegasha, the jurisdictional police has clearly recorded a finding with regard to the dispute land for which the FIR was lodged by the petitioner that the dispute appears to be of civil nature and the case is admittedly, pending before the jurisdictional civil court and finally, it has been held that the complainant's report is found to be untrue. It is not the case that the police has even averred and recorded in the very istegasha that the petitioner has stated facts in the complaint to the police about the commission of offence which she knew to be false or believed to be false, but then also made report to the police for commission of offence against the accused persons therein. As such, the respondent / State has failed to make out a case for commission of offence. One of the basic ingredients of Section 182 of the IPC that the information given by the petitioner, she was knowing and believing to be false, even then she made a report to

the police and still gave the information to harass the accused persons named in the FIR therein, is absolutely missing in the complaint. As such, I am of the opinion that no offence prima facie is made out against the petitioner under Section 182 of the IPC. Therefore, it is a fit case where the prosecution of the petitioner is to be quashed to secure the ends of justice exercising the power under Section 482 of the CrPC.

21. This would bring me to the commission of offence under Section 211 of the IPC which states as under: -

> "**211. False charge of offence made with intent to injure**.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;
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> and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

22. To constitute an offence under Section 211 of the IPC, it must be established that.

    1. the accused instituted or caused to be instituted a criminal proceeding against a person, or
    2. he falsely charged a person with having committed an offence,
    3. he did so with intent to cause injury to such person, and
    4. he did so knowing that there was no just or lawful ground for such proceeding or charge.

23. The Supreme Court in the matter of **Hari Das and another v. State of West Bengal and others**[6] pointed out the ingredients of the offence as under: -

> "Breaking up the section, it is clear that before it can be invoked three things have to be proved : (a) that the accused had intended to cause injury to any person; (b) that with that object he instituted or caused to be instituted a criminal proceeding against that person or in the alternative falsely charged him with having committed an offence and (c) that he did so with the knowledge that there was no just or lawful ground for such proceeding or charge against that person."

Their Lordships further held that Section 211 of the IPC would be applicable only to a case where a false charge is made by the accused person against another before a person who is competent to enquire into it and either take proceedings himself or cause proceedings to be initiated.

24. In the matter of **State of Maharashtra v. SK. Bannu and Shankar**[7], Their Lordships of the Supreme Court have held that while considering a bail application of a person accused of an offence under investigation of the police, the magistrate acts as a 'court', the proceedings in the bail application being judicial proceedings. The principle of law laid down in **SK. Bannu and Shankar's** case (supra) was followed with approval by the Supreme Court in the matter **Abdul Rehman and others v. K.M. Anees-Ul-Haq**[8].

25. The expression "falsely charges" in Section 211 of the IPC has been interpreted by their Lordships of the Supreme Court in the matter of **Santokh Singh v. Izhar Hussain and another**[9] and it

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6 AIR 1964 SC 1773
7 (1980) 4 SCC 286
8 (2011) 10 SCC 696
9 AIR 1973 SC 2190

has been observed as under: -

> “The expression “falsely charges” does not mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. "To falsely charge" must refer to the criminal accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be read along with the expression "institution of criminal proceeding".”

26. Reverting back to the facts of the present case, it is quite vivid that registration of FIR and consequent submission of closure report which converted into judicial proceeding of closure being registered as Closure Case No.65/2008 and which was judicially considered by the Chief Judicial Magistrate, Raipur on 16-9-2008 and closed the criminal case discharging four accused persons therein, would amount to institution of criminal proceeding by the petitioner for the purpose of Section 211 of the IPC, but in light of the fact that the learned Chief Judicial Magistrate has clearly recorded a finding that in the closure report dated 16-9-2008 which is a part of istegasha produced before the criminal court and a civil dispute between the parties being Civil Suit No.88A/2005 is pending consideration before the jurisdictional civil court, it cannot be held that the petitioner has falsely charged the accused therein with intent to cause injury to any person and thereby she instituted criminal proceedings. She bona fidely believed the property to be of her own, she filed a complaint as well as filed civil suit which is pending consideration since the right to property is a constitutional right under Article 300A of the Constitution of India. The petitioner pursuing the remedy and setting the criminal law in motion for protection of her constitutional right of property, cannot be termed

as levelling a false charge for the purpose of Section 211 of the IPC, particularly, there is no whisper in the istegasha filed before the criminal court that she deliberately and intentionally with intent to cause injury to the accused therein set the criminal law in motion except saying that in order to harass the accused therein such an offence was got registered.

27. In the considered opinion of this Court, the respondent / State has failed to make out a case prima facie for prosecution of the petitioner for offence under Section 211 of the IPC and as such, prosecution against the petitioner falls within the category specified by Their Lordships of the Supreme Court in clause (1) of paragraph 102 in the matter of **State of Haryana and others v. Bhajan Lal and others**[10]. Therefore, the complaint as framed and filed does not prima facie disclose the commission of offence and even if it is taken at its face value, no offence under Sections 182 & 211 of the IPC is made out against the petitioner.

28. Concludingly, the criminal case registered and pending against the petitioner and the cognizance taken by the criminal court being Criminal Complaint Case No.614/2010 (State of Chhattisgarh v. Smt. Chetna Surana) in the Court of Judicial Magistrate First Class, Raipur deserve to be and is accordingly quashed.

29. The petition is allowed to the extent sketched herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

10 1992 Supp (1) SCC 335

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.406 of 2013

Smt. Chetna Surana

Versus

State of Chhattisgarh

Head Note

Ingredients of offences under Sections 182 and 211 of the IPC pointed out.

भारतीय दण्ड संहिता की धारा 182 और 211 के अंतर्गत अपराधों के घटकों को बताया गया।