

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 24-09-2021****Pronounced on 07-12-2021****CRMP No. 566 of 2017**

- Sanjay Kumar Vaid S/o Late Hukmichand Vaid Aged About 49 Years R/o Near Rishabhdev Chowk, Bilaspur Road Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.

---- Petitioner**Versus**

1. Champa Lal Vaid S/o Nagraj Vaid Aged About 78 Years R/o Near Rishabhdev Chowk, Bilaspur Road Kawardha, Tahsil Kawardha, District Kabirdham, Chhattisgarh.
2. State Of Chhattisgarh Through The District Magistrate, Kabirdham, District Kabirdham, Chhattisgarh.

---- Respondents

For petitioner	: Shri Raj Kumar Pali, Advocate
For Respondent No. 1	: Shri K.A. Ansari, Sr. Advocate with Shri Aman Ansari, Advocate
For State	: Shri Hariom Rai, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas**C.A.V. ORDER**

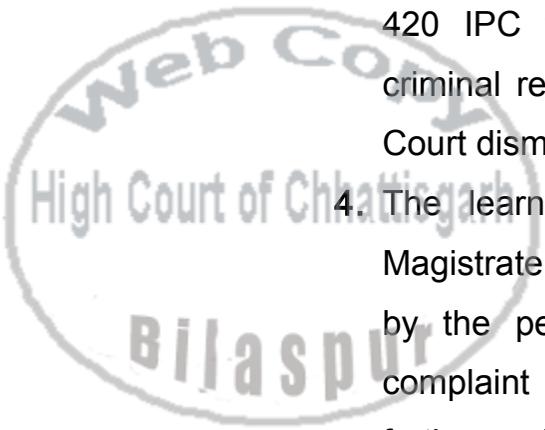
1. The petitioner has filed the present Cr.M.P. under Section 482 of the Cr.P.C. challenging the order passed by the Additional Sessions Judge (F.T.C.) Kabirdham in Criminal Revision No. 24/2016 whereby learned Revisional Court, while dismissing the petition of the petitioner, has affirmed the order of the registration of criminal case against the petitioner vide order dated 13.05.2016 passed by the Chief Judicial Magistrate, Kawardha, District – Kabirdham passed in Criminal Case No. 452/2016.
2. The brief facts projected by the petitioner are that the petitioner is son of Late Kamla Bai Vaid and nephew of respondent No. 1 Champa Lal Vaid. It is submitted that mother of the petitioner and respondent No. 1 jointly owned property at Kawardha and some portion of the said property was acquired by Municipal Council Kawardha for the purpose of widening of the road. An amount of Rs. 3,52,460.00 was





paid to respondent No. 1 and Kamla Bai jointly on 21.05.2008 after deducting the amount of TDS of Rs. 40,472/-.

3. The respondent has made complaint before the Station House Officer in the year 2012 that the petitioner has illegally withdrawn amount of T.D.S. by committing offence of cheating under Section 420 IPC. It has been alleged that refund of TDS was neither received by respondent No. 1 nor Kamla Bai. The police submitted its report mentioning therein that the complaint is not found cognizable. Thereafter, respondent No.1 filed a complaint case under Section 200 of the Cr.P.C. on 25.02.2013 before Chief Judicial Magistrate, Kawardha for the offence punishable under Sections 420, 467, 468 and 471 of IPC. The learned Magistrate called report from the concerned police station and without considering the report submitted by the police, registered the complaint for the offence under Section 420 IPC vide order dated 13.05.2016. The petitioner preferred criminal revision before the Sessions Court and learned Revisional Court dismissed the criminal revision vide its order dated 28.01.2017.
4. The learned counsel for the petitioner would submit that the Magistrate has committed error of law by dismissing the revision filed by the petitioner without considering the subject matter of the complaint minutely and documents placed on record. He would further submit that the amount of refund from the income tax department is only payable to the PAN Card holder, no offence of cheating is possible. He would further submit that Kamla Bai was having the Pan Card and the refund amount by cheque has also been paid to her, therefore, the order passed by the Revisional Court on 28.01.2017 and registration of complaint by the Judicial Magistrate may kindly be set aside.
5. On the other hand learned State counsel has also filed return in which the State has said that the order passed by the Judicial Magistrate First Class registering the complaint under Section 420 IPC against the petitioner is legal, justified as the petitioner has withdrawn the amount through Pan No. AGRPB2219H which belongs to the petitioner. Therefore, the petitioner has committed offence under Section 420 IPC. Learned Judicial Magistrate rightly registered the complaint against which revision petition filed by the petitioner





has also been rejected. Respondent No. 1 has not filed return and would support the order of the revisional Court.

6. I have heard the learned counsel for the parties and perused the record.
7. This Court vide its order dated 13.07.2017 has called the record of the Court below. Before advertng to the legal submission raised by the parties, this Court has to examine whether the registration of the complaint by the Judicial Magistrate is revisable before the Revisional Court by way of revision under Section 397 of the Cr.P.C. or not? It is necessary to extract Section 397 of the Cr.P.C.:-

“Section 397 in The Code Of Criminal Procedure, 1973- Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

8. The registration of complaint cannot be questionable before the learned Revisional Court in view of the judgment passed by the coordinate Bench of this Court in **WP(Cr.) No. 116 of 2013 (Amarnath Agrawal Vs. Jai Singh Agrawal And Ors.)** decided on 10th February, 2015. The coordinate Bench of this Court considering the law on the subject has held in paragraphs 16, 17 and 21 as under:-

“16. The moot question is if a revision application against mere





registration of FIR by the police is not maintainable whether such revision would be held maintainable when the Magistrate only directs registration of FIR. In the opinion of this Court, the answer is an emphatic No. Exercise of revisory power conferred by the Court under Section 397 read with Section 401 of the Code would occasion when there is an order passed by the competent court, which is not interlocutory in nature, however, the said power cannot be exercised to quash the FIR or investigation because such power can be exercised only by the High Court under section 482 of the code or under Article 226/227 of the Constitution of India. If the revision application is considered to be maintainable before the Sessions Court against an order passed by the Magistrate under Section 156 (3) and if such revision is allowed it would have effect of quashing the FIR, therefore, if the Sessions Court has no such powers otherwise, it cannot do so by entertaining a revision against an order passed by the Magistrate under Section 156 (3) of the Code.

17. Referring to its earlier decisions in Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others ((1976) 3 SCC 252) and Tula Ram and Others v. Kishore Singh ((1977) 4 SCC 459), the Supreme Court in Srinivas Gundluri and Others v. Sepco Electric Power Construction Corporation and Others ((2010) 8 SCC 206) has held that when a Magistrate orders investigation under **Section 156 (3) of the Code** without examining merits of the claim, the Magistrate does not bring into motion the machinery of Chapter XV of the Code, therefore, the Magistrate has not taken cognizance of the matter, and, as such, when such direction for investigation is made, the Magistrate does not commit any illegality. Even after receipt of such report, the Magistrate under section 190 of the code may or may not take cognizance of the offence. Thus, at the stage of directing investigation the Magistrate having not applied its mind as it has not taken cognizance of the matter, there is no order of the Magistrate which can be revised under **Section 397 read with Section 401 of the Code**. What is revisable under section 397 of the code is the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court against whose order the revision application has been preferred. When there is no finding, sentence or order against the accused, the same is not revisable under section 397 of the code.

21. The legal position which would emerge from the above referred judgments of the Supreme Court is as follows:-

- Investigation into a cognizable offence by Incharge of jurisdictional police station is a statutory power. Once an information is sent to the jurisdictional police regarding commission of a cognizable offence, it is the statutory duty of the said police to investigate offence. {Lalita Kumari (supra)}.





- The accused has no right to have any say as regards the manner and method of investigation of an offence. {W.N. Chadha (supra), Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj (supra) and Rajesh Gandhi (supra)}.
- The power of the Court to interfere with the investigation is limited. {Naresh Kavarchand Khatri (supra)}.
- *Under Section 156 (3) of the Cr.P.C. Magistrate is conferred limited power to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence {Dharmeshbhai Vasudevabhai (supra)}.
- Exercise of power by a Magistrate under Section 156 (3) is at the pre-cognizance stage. Such exercise is done by the Magistrate when the concerned police officer fails to investigate the matter as is obligatory upon him.
- To exercise revisory power under Section 397, the Court whose order is sought to be revised must have recorded some finding, order or sentence or have drawn a proceeding which is ex facie illegal or without jurisdiction. While directing the police officer to investigate the matter the Magistrate neither records any finding nor passes any order or sentence against the accused because at that stage the registration of FIR is only against the prospective accused.
- If it is held that an order under Section 156 (3) of the Code is revisable, the same would amount to clothing the Sessions Court with the power of quashing the FIR or investigation. Such power is conferred only on the High Court under section 482 of the code or under Article 226/227 of the Constitution of India.”

9. From the afore stated legal position, it is quite clear that revision application under Section 397 Cr.P.C. challenging the registration of complaint is not maintainable, though in the present case the Revisional Court has dismissed the revision on merits which is against the law. As once revision application itself is not maintainable before the Revisional Court, then order passed by Court having no jurisdiction is nullity in the eye of law. As such, the order of the Revisional Court affirming the order of registration of the complaint by the learned Magistrate First Class is liable to be quashed.
10. Since, the petitioner has also challenged the registration of complaint on the count that Kamla Bai was having pan card and the amount was also paid to Kamla Bai through cheque as cheque has been





deposited in the account of Kamla Bai. The learned Court below failed to consider report submitted by the police where after recording of the statement of Kamla Bai, they submitted that no offence is made out for registration of complaint, still the Judicial Magistrate First Class has registered the complaint which is nothing but an abuse of process of law to create pressure on the petitioner with ulterior motive. Therefore, the learned counsel for the petitioner would submit that the petition under Section 482 of the Cr.P.C. be allowed and order of registration of complaint on 13.05.2016 be kindly quashed

11. For better understanding of the facts of the case, it is expedient to extract relevant paragraphs of the complaint, which are as below:-

- “5. यह कि परिवादी ने अपना पेन नम्बर दिया है न ही उक्त राशि निकालने को स्वीकृति दिया है के बाद भी उक्त राशि अभियुक्त द्वारा निकाल लिया गया है।
6. यह कि परिवादी आयकर की राशि हेतु राजनांदगांव आफिस गया व पता किया तो ऑफिस में उक्त टी0 डी0 एस0 की रकम निकाल लेना बताया गया एवं अभियुक्त द्वारा ही निकालना बताया गया।
7. यह कि उक्त रकम को निकालने का अधिकार अभियुक्त की मां कमलाबाई को या परिवादी को था पर दोनों ने रकम नहीं निकाले व अभियुक्त ने छलपूर्वक उक्त राशि निकाला है।
8. यह कि नगर पालिका कवर्धा बिना जांच किये एवं बिना किसी अधिकार के जानबूझकर आयकर दाता को रकम देना बताया है जबकि न तो परिवादी अपना पेन नम्बर दिया है न ही अभियुक्त की मां कमलाबाई का पेन नम्बर है, अभियुक्त छल कर अपना पेन नम्बर का उपयोग कर परिवादी से छल किया एवं छल कर रकम निकाल लिया है।
10. यह कि नगर पालिका कवर्धा द्वारा कमलाबाई एवं परिवादी के सुयुक्त नाम से टी0डी0एस0 सर्टिफिकेट जारी किया गया है परन्तु उसके पेन नम्बर दोनों में से किसी का भी उल्लेखित नहीं है, परिवादी द्वारा संपर्क किये जाने पर आ0आई0टी0 के अंतर्गत दिनांक 28/11/2011 को नगर पालिका द्वारा बताया गया कि करदाता द्वारा उपलब्ध कराए गए पेन नम्बर 22194 टी.डी.एस. की राशि का भुगतान किया गया है जबकि यह पेन दोनों ज्वॉइन्ट पर्सन का नहीं है तथा आयकर विभाग द्वारा पेन कार्ड जो इश्यू किया जाता है उसमें पेनकार्डधारी का नाम, पिता का नाम, पेन नंबर तथा जन्म तिथि अंकित रहता है। इस प्रकार नगर पालिका द्वारा गलत पेन नम्बर का उपयोग कर टी.डी.एस. गलत एकाउन्ट में जमा किया गया।
13. यह कि अभियुक्त को कोई अधिकार नहीं था कि वह टी.डी.एस. की राशि प्राप्त कर सके किंतु तत्कालीन मुख्य नगर पालिका अधिकारी से मिलीभगत कर अभियुक्त ने परिवादी एवं अन्य के नाम से आबंटित मुआवजा राशि के विरुद्ध टी.डी.एस. की राशि फर्जी पेन कार्ड के माध्यम से 40,472/- रुपये फर्जी आहरण किया है। तथा आयकर अधिकारी राजनांदगांव से परिवादी ने पुछताछ किया तब जानकारी हुई कि परिवादी एवं कमलाबाई बैद के नाम पर स्थाई लेखा संख्या एयूएक्सपीबी 2940 एच एवं एआईकेपी 3428 आर दर्ज था और टी.डी.एस. राशि 40,472 रुपये का प्रमाण पत्र प्रारूप-16 नगर पालिका परिषद के तत्कालीन मुख्य नगर पालिकाधिकारी ने अभियुक्त के नाम से जारी किया है जो कर निर्धारण वर्ष 2009-10 वित्तीयवर्ष 2008-09 के लिए जारी किया गया है और आयकर अधिकारी महोदय ने यह भी बताया कि दोनों दावेदार द्वारा आयकर विवरणी दाखिल नहीं किया गया है और न ही दावेदारी प्रस्तुत की थी इसलिए





दोनो दावेदारों को आयकर विभाग द्वारा रिफण्ड जारी करने का प्रश्न उपस्थित नहीं होता। इस तरह यह स्पष्ट था कि परिवादी ने टी.डी.एस. राशि रिफण्ड के लिये कोई आवेदन प्रस्तुत नहीं किया और न ही उसे राशि प्राप्त हुई है, अभियुक्त ने परिवादी का कूटरचित पेन कार्ड नम्बर तैयार कर परिवादी के नाम से जमा राशि टी.डी.एस. की राशि 40,472/- रुपये छलपूर्वक बेइमानी से प्राप्त किया है जो धारा 420 भा. दं. वि. 467, 468, 471 भा. दं. वि. के तहत दंडनीय अपराध है।”

12. From bare perusal of the above mentioned paragraphs of the complaint, it is clear that, prima facie, sufficient material is available against the petitioner for registration of complaint for cheating under Section 420 IPC. Section 415 of the IPC which defines cheating and Section 420 IPC which provides the punishment for cheating are extracted below :-

“**Section 415 of the IPC-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Section 420 of the IPC - Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. The petitioner has raised grounds that the complainant should place on record the material with regard to payment of amount in the petitioner’s account then only offence of cheating can be made out against the petitioner. This is his defence which has been taken by the petitioner and it cannot be considered in the light of the judgment of Hon'ble Supreme Court in case of **Kaptan Singh v. State of Uttar Pradesh and others**¹. Relevant part of the judgment is extracted below:-

“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

¹ AIR 2021 SC 3931



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 hereinabove.

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.”

14. In view of the fact that the order of the Revisional Court is not maintainable and considering the materials available on record, I am of the view that no ground for interference with the registration of complaint is made out. Therefore, the Cr.M.P. liable to be and is hereby dismissed.

15. With the aforesaid observations and directions, the present Cr.M.P. is dismissed.

16. It is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present Criminal Miscellaneous Petition. The trial Court is directed to proceed further, in accordance with law, without being influenced by any of the observations made by this Court while deciding this Criminal Miscellaneous Petition and decide the case within an outer limit of 2 years from the date of appearance of the parties. The complainant and accused are directed to appear before the learned Judicial Magistrate First Class on 04.01.2022. The records of the trial Court be sent back forthwith.

Sd/-

(Narendra Kumar Vyas)
Judge