

(2019) 01 CHH CK 0123

In the Chhattisgarh High Court

Case No : Writ Petition Criminal No. 362, 389, 412, 476 Of 2018

Narendra Rajput And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 200
Evidence Act, 1872 — Section 74, 76
Constitution Of India, 1950 — Article 14

Citation : (2019) 01 CHH CK 0123

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Surfaraj Khan, Ghanshyam Patel

Final Decision : Allowed

Judgement

1. The present petitions are against the rejection order dated 25.06.2018 passed by respondent No.5 In-Charge Officer, Copying Section, Pithoura in administrative capacity whereby certain documents which were filed during the course of Police report were sought pursuant to a criminal complaint and those documents were denied to be supplied by respondent No.5 on the ground that the cognizance has not been taken by the Court.

2. It is contended by the petitioners that a complaint u/s 200 Cr.P.C., was filed by respondent No.6, who is said to be a journalist wherein certain allegations have been made against the petitioners. It is stated that after filing of the complaint, the Magistrate has called for police report. The police subsequently filed the reports on 07.07.2016 & 11.01.2017 and after investigation it was reported that no offence is made out against the petitioners. However, the Magistrate was not satisfied with the report and again called for police report. Subsequently the FIR was lodged by the Police on 11.06.2018 and thereafter the petitioners sought for documents on the basis of which the offence was alleged to have been arisen. The said documents were not supplied on the ground that the cognizance has not

been taken by the Court, therefore, the rejection of supply of documents is uncalled for.

3. Learned counsel for the petitioners submits that the court below i.e., Incharge Officer, Copying Section, Pithoura has completely misread the provisions of pre-cognizance and post-cognizance qua section 200 of the Code of Criminal Procedure. It is stated that though the cognizance was taken u/s 200 Cr.P.C., by calling the reports from the police thrice, but the Presiding Officer could not have directed for registration of FIR and in order to avoid the supply of documents and overcome its procedural lacuna called for the police report on repeated occasions. He placed reliance in *Ramdev Food Products Pvt. Ltd. Vs. State of Gujarat* (2015) 6 SCC 439 and would submit that the documents once become part of the public documents, there cannot be any denial for supply of the same.

4. Per contra, learned State Counsel opposes the arguments and submits that the order passed by the Presiding Officer is well merited which do not call for any interference.

5. Perused the administrative order dated 25.06.2018 passed by the Presiding Officer. Reading of the order would show that the complaint which was filed against the petitioners was not registered and primarily it has been stated that the petitioners have no locus standi. A perusal of the order shows that it is an unregistered complaint wherein on 22.07.2010 for the first time the report was asked from the police. Thereafter, it was pending for six years and reminder(s) was given on 07.07.2016 & 08.08.2016. The order further shows that the Presiding Officer is not satisfied with the Police Report which was subsequently filed on 07.07.2016 and 11.01.2017 and did not agree with the report of the Police and again ordered for investigation. The Presiding Officer in administrative capacity has observed that since again investigation was ordered for, it cannot be said that cognizance has been taken and it was on the pre-cognizance stage. The order further purports that during the precognizance stage, the police has registered the FIR and has not filed any application for closure. The Court further observed that the presiding officer has never fixed the date for recording statement u/s 200 of Cr.P.C., whereby it shows that the statement u/s 200 of Cr.P.C., has not been recorded.

6. It is evident from above discussion that the issue agitated by the petitioners before the court below and this Court as well, is for obtaining certified copies of the documents placed on record by the police. And therefor, the question as to whether the court below has taken cognizance of the offence or the matter is at pre-cognizance stage, is of no importance and is not required to be dealt with here. Now to look into the right of the petitioners to get certified copies at this stage, it would be profitable to have a look of relevant provisions of law dealing with grant of certified copy to anyone.

7. Section 74 of the Indian Evidence Act defines the public document which reads thus :

74. Public documents.- The following documents are public documents :-

(1) Documents forming the acts, or records of the acts -

(I) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth or of a foreign country

(2) Public records kept in any State of private documents.

Likewise, Section 76 further defines the certified copy of the public document which reads as under:

76. Certified copies of public documents.-- Every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation.--Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

8. Reading of section 74 shows that sub-section (3) of section 74 takes within its sweep the public documents including the documents or records forming the acts of the judicial or executive and the manner has been provided in section 76. Further section 76 of the Evidence Act casts upon a duty over every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor.

9. Chapter 21 of CRIMINAL COURTS-RULES AND ORDERS, containing Rules 532 to 544 deals with the inspection of Criminal Records by the public. Rule 532 says that subject to the Rules hereinafter contained a legal practitioner entitled to practise in a Court may inspect the record of that court and any party to a case or his recognised agent may inspect the record of that case whether pending or disposed of. It further says that any other person desiring to inspect the record of a case, whether pending or decided, shall be required to state the purpose for which inspection is sought.

10. From bare perusal of the impugned order dated 25.06.2018, it is evident that the application for obtaining certified copy was moved by the petitioners through their counsel and they were also represented through a legal practitioner before the court below. In view of the above, it is manifestly clear that since they have

a right to inspect the record of a pending case, they also have the right to get the certified copy thereof in view of section 76 of the Indian Evidence Act.

11. Apart from that the concept of fair trial as enshrined under Article 14 of the Constitution of India, makes it vitally necessary that an accused person should be granted a copy of the documents purported to be against him at the earliest possible stage in order that he may get the benefit of legal advice. To put difficulties in the way of his obtaining such a copy is only creating a temptation in the way of Police Officers who are inquiring into the matter.

12. In the matter of Jayantibhai Lalubhai Patel v. State of Gujarat, 1992 CrL.J. 2377, which relates to grant of certified copy of First Information Report at earlier stage, the Gujarat High Court held as under :

"6.whenever FIR is registered against the accused, a copy of it is forwarded to the Court under provisions of the Code, it becomes a public document. Considering (1) the provisions of Art.21 of the Constitution of India, (2) First Information Report is a public document in view of S.74 of the Evidence Act, (3) Accused gets right as allegations are made against him under the provisions of Section 76 of the Indian Evidence Act, and (4) FIR is a document to which S.162 of the Code does not apply and is of considerable value as on that basis investigation commenced and that is the first version of the prosecution, as and when application is made by accused for a certified copy of the complaint, the Court to which it is forwarded should give certified copy of the FIR, if the application and legal fees thereof have been tendered for the same in the Court of law..."

13. Therefore, after taking such facts and provisions of law into consideration, I hold it expedient in the interest of justice that a certified copy of the documents including first information report, which are placed on record of the Court and other public documents, should be granted to the petitioners on payment of the legal fees therefor at any stage even earlier than the stage of S.173(4) of the Code of Criminal Procedure. At the later stage, the petitioners will have the right to have a copy free of cost but the same would not take away the right they already have in law to have a certified copy of the documents including first information report on payment of the legal fees.

14. In view of the above discussion, the petitions are allowed. The Court below is directed to supply all the relevant documents which have been applied for by the petitioners.