

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 28th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 29487 of 2022

BETWEEN:-

SMT. SUMITRA DEVI KASDEKAR W/O RAJESH KUMAR KASDEKAR, AGED ABOUT 39 YEARS, OCCUPATION: AGRICULTURIST AND M.L.A. OF BJP FROM NEPANAGAR BURHANPUR, RESIDENT OF VILLAE DEDTALAI POST DEDTALAI TAHSIL KHAKNAR DISTRICT BURHANPUR (MADHYA PRADESH)

.....APPLICANT

(BY SHRI MANISH DATT - SENIOR ADVOCATE - ASSISTED BY SHRI ESHAAN DATT - ADVOCATE FOR THE PETITIONER.)

AND

1. THE STATE OF MADHYA PRADESH THROUGH POLICE STATION KHAKNAR, DISTRICT BURHANPUR (MADHYA PRADESH)
2. BALCHAND SHINDE S/O SHRI FAKIRCHAND SHINDE, AGED ABOUT 70 YEARS, OCCUPATION: CULTIVATOR, RESIDENT OF HOUSE NO. 195 MAHAJNAPETH JAWERIWADA POLICE STATION SHIKARPURA BURHANPUR DISTRICT BURHANPUR (MADHYA PRADESH)

.....RESPONDENTS

(NO. 1 STATE BY SHRI ALOK AGNIHOTRI - GOVERNMENT ADVOCATE)

(NO. 2 BY SHRI RAVINDRA KUMAR GUPTA - ADVOCATE)

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This application coming on for admission this day, the court passed the following:

ORDER

With the consent of learned counsel for the parties, the matter is finally heard.

2. By the instant petition filed under Section 482 of the Code of Criminal

Procedure, the petitioner is seeking quashing of order dated 20.05.2022 (Annexure-1) passed by the court below whereby the Judicial Magistrate First Class, Burhanpur has taken cognizance of the complaint made by the respondent No.2 (complainant) under Section 156(3) of the Code of Criminal Procedure and directed Police Station Khaknar to register the FIR against the petitioner and submit a charge sheet thereafter.

3. Learned counsel for the petitioner challenged the said order by filing revision but the Revisional Court by order dated 08.06.2022 rejected the revision on the ground that the same was not maintainable because against the order dated 20.05.2022 passed by the Judicial Magistrate First Class under Section 156(3) of Cr.P.C. remedy is available under Section 482 Cr.P.C. and as such this petition has been filed.

4. Learned counsel for the petitioner has assailed the impugned order mainly on the ground that the Judicial Magistrate First Class before entertaining the complaint under Section 156(3) of Cr.P.C. has not examined mandatory requirement of filing a complaint under Section 156(3) of Cr.P.C. According to learned counsel, it is a duty of the complainant to first approach the concerning police station under Section 154(1) of Cr.P.C. and if nothing is done by the said police station then he has to make an application under Section 154(3) of Cr.P.C., but instead of doing so, the complainant has directly approached the Superintendent of Police and other higher authorities by making a complaint against the petitioner and when nothing was done on his complaint then he made complaint under Section 156(3) of Cr.P.C. He has submitted that the said complaint was not maintainable. He has also submitted that before entertaining the complaint the court was duty bound to see whether complaint has been

made against a cognizable offence or not and the allegation made in the complaint constitutes any cognizable offence against the person concerned or not but that has not been done and without application of mind the trial court has not only entertained the complaint but also directed police to register FIR and submit charge sheet. He has also submitted that the court below is having no jurisdiction to entertain the complaint made under Section 156(3) of Cr.P.C. relating to MPs/MLAs in view of the notification dated 14.12.2021 issued by the High Court in pursuance to the judgment of Supreme Court in the case of **Ashwini Kumar Upadhyay versus Union of India and Anr.- Writ Petition (Civil) No. 699/2015** setting up Special Courts to deal with criminal cases registered against the elected Members of Parliament and Members of Legislative Assembly.

5. Per contra, learned counsel for the respondent No. 2 has opposed the submission made by the learned counsel for the petitioner and submitted that it is not the proper stage to entertain a petition filed under Section 482 of Cr.P.C.. He has submitted that whether the offence is cognizable or not is the domain of the Court to see and during trial the court will consider this aspect. He has pointed out certain documents available on record showing that the complainant approached the police station but when nothing was done he made a complaint under Section 156(3) of Cr.P.C.. He also submitted that on an earlier occasion a writ petition was filed by the complainant alongwith several documents asking the Court to direct the police authorities to take cognizance in the matter but that petition was disposed of directing petitioner to avail remedy available under Section 156 Cr.P.C. or under Section 200 Cr.P.C. and as such the complainant availed the said remedy. He has submitted that the petitioner is challenging the order merely on technicalities but the substantive part of the case is that the

conduct of the petitioner has to be examined because she being a public leader has given a false affidavit and has taken advantage of her post and also deprived an eligible person to get the gas agency. He has submitted that all these aspects can be considered by the trial court after conducting trial and as such this petition challenging the order passed by the court below taking cognizance in the matter is without any substance and deserves to be dismissed accordingly.

6. After having considered the rival contentions of the learned counsel for the parties and perusal of record, it is evident that the counsel for the petitioner has also raised an objection with regard to competency of the Court which has entertained the complaint under Section 156(3) of Cr.P.C. filed by the respondent No. 2. Since the question of competency and jurisdiction of the court is involved, therefore this Court finds it fit to decide the said question first for the reason that if it is held that the said court is having no jurisdiction to entertain the complaint, the order based on the said complaint would automatically go and this Court would not require to answer the other questions raised by the parties.

7. Learned counsel for the petitioner has submitted that in view of the judgment of the Supreme Court in the case of **Ashwini Kumar Upadhyay versus Union of India and Anr.- Writ Petition (Civil) No. 699/2015**, the High Court of Madhya Pradesh, Jabalpur has issued a Notification bearing No. B/8125/III-6-22018 Jabalpur dated 14.12.2021 particularizing and designating the Courts as Special Courts under the scheme to deal with the criminal cases involving political persons for trial of cases registered against the elected Members of Parliament and Members of Legislative Assembly in the State of Madhya Pradesh.

8. So far as the area is concerned where the offence is registered against the petitioner, who was a Member of Legislative Assembly at the relevant point of time, the said area comes within District Burhanpur and as such matter relates to Burhanpur District and has to be tried by the designated Judge of Indore District Court. But, here in this case, the Judicial Magistrate First Class, Burhanpur has entertained the complaint under Section 156(3) of Cr.P.C. of respondent No. 2 that too against the petitioner, who was a Member of Legislative Assembly. As per the allegation, at the time of submitting her nomination paper, the petitioner had given a false affidavit in which incorrect information was supplied to the Election Commission and therefore complainant made a complaint to the Superintendent of Police and other higher police authorities for taking action against the petitioner. When nothing was done, the respondent No. 2 filed a complaint under Section 156(3) of Cr.P.C. before the court whereupon the trial court entertained the said complaint and directed police to register offence against the petitioner and also submit a charge sheet.

9. The Notification dated 14.12.2021 very specifically portrays and speaks about the direction issued by the Supreme Court. It sets up the Special Courts to deal with the cases relating to Members of Parliament and Members of Legislative Assembly. Thus, taking note of the notification issued by the High Court, I have no hesitation to hold that the Court of Burhanpur, which entertained the complaint, is having no jurisdiction as the said court was not designated to deal with the criminal cases involving MPs and MLAs and the said court could not have entertained the complaint filed by the respondent No. 2 under Section 156(3) of Cr.P.C.

10. As a result, in view of the observation made hereinabove and the

notification dated 14.12.2021 issued by the High Court pursuant to the judgment of the Supreme Court in the case of **Ashwini Kumar Upadhyay (supra)**, this petition is allowed. The impugned order dated 20.05.2022 (Annexure-1) passed by the Judicial Magistrate First Class, Burhanpur entertaining the complaint filed by the respondent No. 2 under Section 156(3) of Cr.P.C. is held without jurisdiction and is hereby set aside accordingly.

11. The trial court is directed to forward the complaint to the competent court and if so requires the respondent No. 2 (complainant) may initiate the complainant. The petitioner may also appear and raise objection with regard to maintainability of complaint and also taking cognizance in the matter.

12. It would be pertinent to make it clear that since this Court has held that the court which entertained the complaint having no jurisdiction, the other points touching the merit of the case are not being tested for adjudication for the reason that after remanding the matter to the competent court, the petitioner may appear before the court to whom the matter shall be remitted and raise any objection, if so required and in that event the competent court shall consider the grievance of the petitioner and decide the same in accordance with law. Since the basic ground of competency and jurisdiction of the court has been decided by this court, the other grounds raised by the petitioner are not being dealt with because if foundation goes, all the infrastructures based upon the said foundation also goes.

13. This **petition is allowed** to the extent indicated hereinabove and disposed of.

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