

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1041 of 2014**

- Umesh Kumar Sahu S/o . Shri Ramlal Sahu Aged About 40 Years (Working As Sikshakarmi Grade-III (Asstt. Teacher Panchayat), Govt. Primary School, Anjoradih, Block Chhura Distt. Gariyaband (C.G.), R/o. Chhura, P.S. Chhura, Distt. Gariyaband (C.G.)

---- **Petitioner****Versus**

- Laxman Rao Magar Aged About 50 Years Working As Assistant Block Education Officer Dhamtari, Distt. Dhamtari (C.G.)

---- **Respondent**

For Petitioner	:	Mr. Alok Bakshi, Adv.
For Respondent	:	Mr. Prateek Sharma, Adv.

Order On Board**31/03/2016**

With consent of the parties, heard the matter finally at motion stage itself.

2. Respondent has opposed the petition orally.
3. Facts necessary for disposal of this case are that respondent filed a Writ Petition (s) No. 1367/2014 under Article 226 of the Constitution of India challenging the transfer order dated 22-2-2014. This Court after hearing the parties vide order dated 13-3-2014 quashed the order dated 22-2-2014 and further opportunity was granted to the respondent/State to pass fresh order in consultation with Election Commission or concerned District Election Officer. The present applicant had filed instant CRMP under Section 340 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.) for initiating appropriate proceedings against the present respondent for commission of offence under Sections 191, 192, 193 of the Indian Penal Code read with Section 195 of the Cr.P.C. for swearing in false and incorrect affidavit dated 9-3-2014 filed along with WP(S) No. 1367/2014 and prayed that as the said affidavit contains incorrect statement on oath by the respondent before this Court, hence proceeding should be initiated against him for aforementioned offence.
4. Heard learned counsel for the parties and perused the instant CRMP along with other documents annexed.
5. Learned counsel for the applicant supported the grounds taken in the instant

CRMP and submitted that on the basis of the facts and ground taken, proceedings be initiated against the respondent.

6. Section 340 of the Cr.P.C. is relevant and reads thus :-

“340.Procedure in cases mentioned in section 195.-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.”

7. From perusal of the material available in the record, it goes to show that present applicant was not party to the said WP(S) No. 1367/2014. It also appears that the applicant has not made other respondents of the said writ petition as party in the present CRMP. The applicant failed to demonstrate his locus to file instant CRMP and to pray for relief as made in the petition. Merely the fact that the applicant is an Assistant Teacher, Tanchayat at Government Primary School, Anjoradih, Block Chhura Distt. Gariyaband and he is Vice-President of CG. Vidyalayin Shikshak Sangh registered under

the Registration Act, 1960 does not entitle him to pray for initiation of any inquiry against the respondent.

8. Upon consideration of entire facts and material, in the considered opinion of this Court, as the present applicant has no locus in the matter and other respondent are not made party in the proceedings as they were in WP(S) No. 1367/2014, also there is no substantive material to demonstrate regarding furnishing of incorrect facts on affidavit, I am not inclined to proceed further in the matter. Therefore, instant CRMP is dismissed as not maintainable.
9. For the reasons stated above, the CRMP is dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge