

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 899 of 2015**

1. Amit Joshi, S/o. Late R.K.Joshi, Aged About 44 Years, Chief (Human Resources), BALCO Plant, Balco Nagar, Police Station Balco Nagar, Tahsil & District Korba, Chhattisgarh.
2. Manoj Kumar, S/o. Anand Kishor Pandey, Aged About 51 Years, General Manager (Administration & Safety), BALCO Plant, Balco Nagar, Police Station Balco Nagar, Tahsil & District Korba, Chhattisgarh.
3. P.S. Neelkanth, S/o. Subaiyya, Aged About 49 Years, R/o. Chief Security Officer, BALCO Plant, Balco Nagar, Police Station Balco Nagar, Tahsil & District Korba, Chhattisgarh.
4. Ramkumar Choudhari, S/o. Lekhram Choudhari, Aged About 26 Years, Junior Security Officer, BALCO Plant, Balco Nagar, Police Station Balco Nagar, Tahsil & District Korba, Chhattisgarh.

---- Petitioners

Versus

Sanjeev Sharad Sharma, S/o. Late V.K. Sharma, R/o. Plot No.223, Kosabadi, Korba, Tahsil & District Korba, Chhattisgarh.

---- Respondent

 For Petitioner : Mr. Manoj Paranjpe, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order****08/10/2015**

1. Challenge in this petition is to the order dated 22.04.2015 passed by the Second Additional Sessions Judge, Korba, in Criminal Revision No.74/2014. By such order, the order dated 30.04.2014 passed by the Judicial Magistrate First Class, Korba, in Criminal Case No.43/2013 in between *V.K.Sharma v. Amit Joshi & Others* was affirmed.
2. The facts of this case are that a criminal complaint was filed by one V.K.Sharma against Amit Joshi, Manoj Kumar, P.S.Neelkanth & Ramkumar Choudhari under Section 200 of Cr.P.C. wherein after recording of the evidence, the Court of Judicial Magistrate had registered the offence under

Section 452, 323, 506(1) of IPC against Ramkumar Choudhary and offence under Section 323, 506(1) of IPC was registered against Amit Joshi, Manoj Kumar and P.S.Neelkanth. Subsequently, the petitioners/accused were summoned and they were bailed out. The case was thereafter adjourned on different dates for some reason or other and the case when was fixed for evidence before charge on 18.12.2013, it was informed that the complainant V.K.Sharma is dead. Subsequently, on 30.04.2014, an application was filed by the legal heir of V.K.Sharma namely Sanjeev Sharad Sharma to continue the proceeding being the legal heir of V.K.Sharma. At this juncture, an application was filed under Section 256 of Cr.P.C. by the petitioners/accused on the ground that since the complainant has died, therefore, the accused may be discharged in view of Section 256(2) of Cr.P.C. The said application was dismissed by the Court below holding that the legal heir can continue with the complaint, consequently the criminal complaint continued. The said order to continue the complaint was assailed before the revisional Court which too affirmed the order of the Judicial Magistrate First Class, Korba. Hence, this petition.

3. Learned counsel for the petitioners would submit that in this case V.K.Sharma was the aggrieved person and the complaint was filed by him. It is further stated that the allegations leveled were in the nature of private allegation and assault and the complainant having been died, the criminal complaint cannot be continued. It is further submitted that the complainant having died, the proceeding stood abated. The reliance was placed in case of **Kavita Devi; Kali Charan v. State of Jharkhand; Binda Singh** decided on 18.08.2015 by the High Court of Jharkhand and in case of **Subbanna Hedge v. Dyavappa Gowda** decided on 03.03.1980 by the High Court of Karnataka.
4. Having heard the counsel for petitioner, the case file was perused.
5. In order to interpret the situation, Section 256 of Cr.P.C. would be necessary, which is quoted as under :

256. Non-appearance or death of complainant.-

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day;

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

6. The Hon'ble Supreme Court way back in 1967 in case of **Ashwin Nanubhai Vyas v. The State of Maharashtra & Another**, by three Judges Bench reported in **AIR 1967 SC 983** has settled the issue and has held that the Court can always permit to continue with the prosecution even in case of death of the complainant. The said judgment was passed by three Hon'ble Judges. In this case, admittedly, the cognizance has been taken. Here in the instant case, the order sheet would reveal that the cognizance has already taken after the complainant was examined and thereafter the Court of Judicial Magistrate First Class by its order dated 30.04.2014 had permitted the respondent, the legal heir of the complainant, to continue with the prosecution. The judgment cited by the petitioner therefore do not overcome the dictum laid down by their Lordships of Supreme Court.
7. The order sheet would show that till the legal heir was allowed to continue the complaint, the petitioners were not discharged and since the son of the complainant was allowed to continue, he stepped into the shoes of the

complainant. Further, the Court having granted permission under Section 320 of Cr.P.C. to conduct the prosecution, the same cannot be faulted with. The similar view has been expressed by their Lordship in case of **Balasahed K. Thackeray & Another v. Venkat & Another**, reported in **(2006) 5 SCC 530**.

8. This can be looked into from the another angle that if any offence is committed and the cognizance has been taken by the Court, upon death of complainant, it cannot open a gate way of the acquittal as a matter of right for the accused. The maxim actio personalis moritur cum persona – a personal right of action dies with the person does not apply to a criminal prosecution; acquittal of accused due to death of complainant will result in giving premium to their alleged criminal activities. If the analogy to discharge the petitioners is accepted without merit then it would defeat the very purpose of criminal jurisprudence.
9. In view of foregoing, I am not inclined to invoke the extra ordinary jurisdiction of this Court vested in it under Section 482 of Cr.P.C. to set aside the order passed by both the Courts below, as reading of the order reflects that no jurisdictional error has been committed by both the Courts below.
10. In the result, the petition sans merit and hence is dismissed at the motion stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE