

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.63 of 2016

1. Manoj Agrawal, S/o Nand Kishore Agrawal, aged about 39 years, R/o Baramkela, Police Station Baramkela, District Raigarh.
2. Mukesh Agrawal, S/o Nand Kishore Agrawal, aged about 36 years, R/o Baramkela, Police Station Baramkela, District Raigarh.

Civil & Revenue District Raigarh.

---- Petitioners

Versus

State of Chhattisgarh, through the Police Station City Kotwali,
District Raigarh (CG)

---- Respondent

For Petitioners: Mr. B.P. Sharma, Advocate.

For State/respondent: Mr. Dheeraj Kumar Wankhede, Government
Advocate on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

28/03/2016

1. In this petition, the petitioners seek to challenge the order framing charge dated 19-2-2016 and the charges framed on that day stating inter alia that no offence is made out against the petitioners and eventually also quashing of charge-sheet.
2. Learned State counsel, at the outset, would submit that the order passed by the Court of Session framing charges against the petitioners is revisable under Section 397 read with Section 401 of the CrPC and therefore the petitioners be

relegated to the remedy of revision under Section 397 read with Section 401 of the CrPC against which Mr. B.P. Sharma, learned counsel for the petitioners, would submit that the petition is maintainable and relied upon the judgments of the Supreme Court in the matters of **Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others**¹, **Amit Kapoor v. Ramesh Chander and another**², **Rajiv Thapar and others v. Madan Lal Kapoor**³, **Prashant Bharti v. State (NCT of Delhi)**⁴ and **Umesh Kumar v. State of Andhra Pradesh and another**⁵.

3. I have heard learned counsel for the parties on admission, given thoughtful consideration to the submissions raised therein and gone through the record with utmost circumspection.
4. Concededly, the order framing charge is a revisable order under Section 397 read with Section 401 of the CrPC and as such, the statutory alternative remedy of revision is available to the petitioners.
5. In the matter of **Chandra Babu alias Moses v. State Through Inspector of Police and others**⁶, the Supreme Court while reiterating the scope of revisional jurisdiction has categorically held that revisional jurisdiction should normally

1 (1998) 5 SCC 749

2 (2012) 9 SCC 460

3 (2013) 3 SCC 330

4 (2013) 9 SCC 293

5 (2013) 10 SCC 591

6 (2015) 8 SCC 774

be exercised on question of law, however, factual appreciation is permissible in case of perverse finding.

6. In the matter of **Union of India and others v. Major General Shri Kant Sharma and another**⁷, in paragraph 36, the Supreme Court has summarized the decisions and held that writ court must have due regard to the legislative intent evidenced by the provisions of the Acts and should exercise its jurisdiction consistent with the provisions of the Act and when a statutory forum is created by law for redressal of grievances, the writ petition should not be entertained ignoring the statutory dispensation, and observed as under: -

“36. The aforesaid decisions rendered by this Court can be summarised as follows:

- (i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India. (Refer: L. Chandra Kumar⁸ and S.N. Mukherjee⁹).
- (ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: Mafatlal Industries Ltd.¹⁰).
- (iii) When a statutory forum is created by law for redressal of grievances, a writ petition

⁷ (2015) 6 SCC 773

⁸ L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577

⁹ S.N. Mukherjee v. Union of India, (1990) 4 SCC 594 : 1990 SCC (Cri) 669

¹⁰ Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536

should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma¹¹).

(iv) The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma¹¹).”

7. In the case in hand, the petitioners have alternative remedy of filing revision under Section 397 read with Section 401 of the CrPC against the order framing charge and the result / interference, if any, in the impugned order in favour of the petitioners will take care of the other reliefs claimed in the writ petition. Therefore, I am of the considered view that the remedy of revision, which is available to the petitioners, is efficacious as well as alternative remedy in the light of decisions of the Supreme Court in the above-stated cases and as such, this Court is not inclined to entertain the writ petition. Accordingly, the writ petition is dismissed at the admission stage itself without notice to the other side. However, this dismissal will not be a bar for the petitioners to avail the statutory alternative remedy in accordance with law for redressal of their grievances. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

11 Nivedita Sharma v. Cellular Operators Assn. of India, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947