

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 867 of 2016**

1. Shushil Kumar Mittal S/o Shivnarayan Mittal Aged About 47 Years R/o Nayaganj Raigarh, Tahsil & District Raigarh, Chhattisgarh.
2. Sunil Kumar S/o Chaturbhuj Agrawal Aged About 52 Years R/o Danipara, Raigarh, Tahsil & District Raigarh, Chhattisgarh.

---- Applicants**Versus**

1. Nitash Agrawal S/o Gulabchand Agrawal Aged About 30 Years R/o Near Town Hall Raigarh, Tahsil & District Raigarh, Chhattisgarh.
2. Akash Moda S/o Late Vijay Moda Aged About 23 Years R/o Gaddi Chowk, Raigarh, Tahsil & District Raigarh, Chhattisgarh.
3. Smt. Chanda Moda Wd/o Late Vijay Moda Aged About 47 Years R/o Gaddi Chowk, Raigarh, Tahsil & District Raigarh, Chhattisgarh.
4. Sathish Agrawal S/o Ghanshyam Agrawal Aged About 52 Years R/o Naya Ganj Raigarh, Tahsil & District Raigarh, Chhattisgarh.
5. State Of Chhattisgarh Through City Kotwali Raigarh Tahsil & District Raigarh, Chhattisgarh.

---- Non-applicants

For Applicants	:	Mr. V.R. Tiwari, Advocate.
For Non-applicants No. 1	:	Mr. Sourabh Sharma, Advocates
For State/ Non-applicant No.5	:	Mr. O.P. Sahu, Govt.

Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****16/08/2016**

1. By way of the present Cr.M.P. the Applicants have challenged the order dated 05.07.2016 passed by the Special Judge Raigarh in Criminal Revision No. 15/2016.
2. Learned Counsel for the Applicants submits that the complainant has not only misused the process of law but also misused the process of

the Court in as much as the very same complainant had on an earlier occasion for the same alleged act and offence had filed the complaint case before the Court below in which the Magistrate has called for the police report and which was also duly submitted after investigation by the police authorities in the Court. However, subsequently the complainant through his lawyer withdrew the said complaint case, accordingly the complaint case was dismissed as not pressed vide order dated 26.11.2013.

3. Subsequently, it is said that the complainant again now on 03.02.2014 moved a fresh complaint case against the Applicants making them accused before the same Court which is pending consideration before the Court below at this juncture. The Applicants moved an application before the Magistrate Court, intimating that the complaint case earlier filed in this regard has been dismissed as withdrawn on 26.11.2013, therefore, the second complaint case for the same cause of action may not be maintainable. However, the Court below refused to accept the said application of the Applicants and rejected the application on the ground that the Applicants do not have locus at this juncture against the filing of the complaint. Against the said order the Applicants had also preferred a Revision Petition, which too has been rejected on the same ground vide the impugned order dated 05.07.2016.

4. Learned Counsel for the Applicants submits that the act on part of the complainant firstly withdrawing the complaint case in year 2013 and subsequently filing a fresh complaint case in the same set of evidences against alleged offence is not maintainable. The Court below ought to have considered this aspect and having not done so,

it amounts to misuse of process of the Court and the law.

5. At this juncture Shri Saurabh Sharma entering appearance on behalf of the complainant, Non-applicant No. 1 submits that this Cr.M.P. itself is not maintainable and is pre-mature at this stage. He further submits that there is no restriction what so ever from filing fresh complaints on repeated occasion.
6. He further submits that the first application was decided not on merit but it was simply withdrawn, also gives right in favour of the complainant for filing second complaint. He further submits that the locus part of the Applicants' right to move to the Court before registering the case is no longer integra in view of the judgment of the Supreme Court in case of ***Gurdev Singh Vs. Surinder Singh and Others*** reported in **(2015) 3 SCC 773**.
7. True it is that at this juncture the Court below has not taken cognizance of the complaint case filed by the Non-applicant and in the Paragraph 11 of the said complaint the Non-applicant has referred to the fact that they had earlier filed a complaint case and it was dismissed as not pressed by the Court below vide its order dated 26.11.2013 and it also reflects that no further steps have been taken by the complainant for its restoration rather they have preferred a fresh complaint case itself before the Court below.
8. At this juncture in the opinion of this Court ends of justice would meet if the matter is disposed with a direction to the Court below to pass an appropriate order in the complaint case filed by the complainant at the earliest and it is expected that the Magistrate shall also keep in mind the effect of the earlier filing of the complaint case and its withdrawal by the complainant as not pressed and that too

subsequent to the police report having been filed before the Magistrate.

- 9.** With the aforesaid observation the present Cr.M.P. stands disposed of.

Sd/-

(P. Sam Koshy)
JUDGE