

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1087 of 2015**

1. Smt. Shyamvati W/o Shri Anjori Nishad Aged About 40 Years R/o Village Karhi, P.S. Bemetara, Tahsil & District Bemetara Chhattisgarh
2. Anjori Nishad S/o Amoli Nishad Aged About 45 Years R/o Village Karhi, P.S. Bemetara, Tahsil & District Bemetara Chhattisgarh

---- **Petitioners****Versus**

1. Pratap Verma S/o Jagtaran Verma Aged About 28 Years R/o Village Karhi, P.S. Bemetara, Tahsil & District Bemetara Chhattisgarh
2. Jagtaran Verma S/o Chaitram Verma Aged About 45 Years R/o Village Karhi, P.S. Bemetara, Tahsil & District Bemetara Chhattisgarh
3. State Of Chhattisgarh Through Incharge Police Station Newra,, Tahsil Tilda District Baloda Bazar Bhatapara Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri C.K. Sahu, Advocate
For Respondent No.3	:	Smt. M. Asha, Panel Lawyer
Respondents 1 and 2 not noticed.		

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

09/03/2016

1. With the consent of the parties heard the matter finally at the motion stage itself.
2. Facts in brief required for disposal of the instant Cr.M.P. are that the petitioners/complainant had filed a Complaint Case before the Judicial Magistrate First Class, Tilda, District Raipur against respondents 1 and 2 for taking cognizance and further trial under Sections 302/34, 120B of the Indian Penal Code (for brevity the IPC). On behalf of the complainant/applicant, 8 witnesses have been examined before the concerned Magistrate in support of

the complaint. After hearing the complainant, the Court below passed the order on 16.6.2015 and while discussing the entire evidence in the matter, held that there is no material prima facie against the respondent/accused A1 and A2 to register the case under Sections 302/34, 120B IPC. Hence, the Court below dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (for brevity the Cr.P.C.). Against the said order, the complainant/revisioneer preferred a Cr. Revision. The Sessions Judge, Raipur vide order dated 13.10.2015 in Cr. Revision No.279/2015 held that there is no error in the impugned order, hence, dismissed the said Cr. Revision and affirmed the order passed by the Magistrate dated 16.6.2015. Against the said order, the complainant/applicants have preferred the instant Cr.M.P. and prayed that jurisdiction under Section 482 of Cr.P.C. be invoked and the order passed by the trial Court be set aside and the trial Court be directed to register the case against respondents 1 and 2 in the interest of justice.

3. The grounds taken on behalf of the complainant/applicants are that the order passed by the trial Court is contrary to the facts and evidence on record, illegal and without properly appreciating the facts and statement available on record. The Court below committed a grievous error for appreciating the statement of the Doctors who examined the dead body of the deceased-Gokul Nishad at the time of postmortem. As the order impugned is illegal and erroneous hence, it is submitted that the order passed by the trial Court be set aside and Court below be directed to register the case against respondents 1 and 2.

4. On the other hand, learned counsel for the State/ respondent 3 opposed the petition orally.

5. Heard learned counsel for the petitioners and perused the instant Cr.M.P., the order passed by the trial Court as well as the revisional Court and

the documents annexed.

6. Learned counsel for the petitioners submits that as per statement of the Complainant witness No.6, Dr. Gokaran Singh Som that on an accident, the deceased hit from the back side and the injuries received on the testicles may not occur. There was dispute regarding payment of money as the same was due against the respondents 1 and 2 and the deceased went to realize the same, the deceased was murdered and a false case of accident has been registered by the concerned police, interalia, the matter relates to murder and also criminal conspiracy. As per facts at the time of incident, accused A-1 Pratap Verma was going along with the deceased and as per story of the prosecution, they met with an accident and an unknown truck hit Gokul Nishad and Pratap Verma. Pratap Verma was also injured and Gokul Nishad died. It is submitted that accused A1- Pratap Verma had committed the murder with criminal conspiracy. There is sufficient material to register a case against respondents 1 and 2, hence, present petition may be allowed and the Court below be directed to register the case against respondents 1 and 2.

7. From perusal of the impugned order passed by the trial Court, the revisional Court and the preliminary evidence adduced on behalf of the petitioners/ complainant under Section 200 and 202 of Cr.P.C., it goes to show that there is no eye-witness and no circumstantial evidence has been adduced on behalf of the complainant. The complainant merely throwing suspicion over the postmortem report and statement of complainant witness No.6, Dr. Gokaran Singh Som at para 6. On perusal of witness No.8, Om Prakash Yadav, Head Constable it seems that he registered Crime No. 38/2014 under Sections 304A, 279, 337 IPC against the unknown truck driver and also registered the merg No.10/2014. From entire perusal of the witnesses examined by the complainant under Section 200 and 202 Cr.P.C., it goes to

show that as per para 5 of the statement of Dr. Gokaran Singh Som, goes to show that the nature of the incident is accidental and death has been caused due to shock developed on account of injuries sustained by the deceased. Also as per para 6, the injuries sustained at the testicle may be caused on account of fall over some pointed and edged stone. The Doctor also noticed injuries over the leg, hand, knee, head and also noticed presence of alcohol in the body of the deceased- Gokul Nishad. There is clear appreciation that the death has been occurred on account of accident and also there is no evidence adduced by the complainant/petitioner before the trial Court regarding any facts and circumstances for the criminal conspiracy or murder. On the basis of entire material the Court below held that Crime No.38/14 has been registered by the Newra Police under Sections 304A, 279, 337 IPC and also the motorcycle was damaged on its back side. The Court below has not noticed any prima facie material to register the complaint case against respondents 1 and 2.

8. On due consideration, I do not see any illegality or impropriety after consideration of the entire material. The offence cannot be registered merely on the basis of assumption and probabilities or possibilities. The revisional Court also after due appreciation held that there is hardly anything as to invoke the revisional jurisdiction for interference in the impugned order. This Court too is of the considered view that the order passed by both the Courts below is proper as per the material available before the Court.

9. I do not see any reason to interfere with the orders passed by the trial Court and revisional Court. The instant Cr.M.P. has no substance and it deserves to be dismissed and is hereby dismissed at the motion stage itself.

Sd/

(Chandra Bhushan Bajpai)
Judge

