

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 206 of 2016**

1. Manoj Agrawal S/o Nand Kishore Agrawal, aged about 39 years, R/o Baramkela, Police Station Baramkela, District Raigarh (Chhattisgarh)
2. Mukesh Agrawal, S/o Nand Kishore Agrawal, aged about 36 years, R/o Baramkela, Police Station Baramkela, District Raigarh, Civil & Revenue District Raigarh (Chhattisgarh)

**---- Appellants****Versus**

1. State of Chhattisgarh through the Police Station City Kotwali, District Raigarh (Chhattisgarh)
2. Smt. Anita Agrawal, W/o Late Dani Ram Agrawal, R/o Lendhra Road Baramkela, P. S. Baramkela, District Raigarh (Chhattisgarh)

**---- Respondents**


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|---------------------------|---|------------------------------------|
| For Appellants            | : | Shri B. P. Sharma, Advocate        |
| For Respondent no.1/State | : | Shri J. K. Gilda, Advocate General |
| For Respondent no.2       | : | Shri Ankit Singhal, Advocate.      |

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**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice****Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****28/03/2017**

We have heard the learned counsel for the Appellants, the Advocate General and learned counsel for second respondent who is the complainant in a Criminal Case from which the Writ Appeal has arisen.

2. The Appellants invoked jurisdiction of this Court under Article 226 of the Constitution of India insisting that charge ought not to have been framed against them in a criminal case. The plea is that the contents of the so called charge do not disclose any offence punishable in terms of law and the Appellants should not be forced to face trial on the allegations which are set forth even if they are taken on their face value in totality.

3. The learned Single Judge, on the reason that the Appellants have adequate and efficacious alternative remedy under Section 397/ 401 Cr.P.C, as the case may be, refused to entertain the writ petition and delegated the Appellants to appropriate jurisdiction. This is under challenge.

4. Learned counsel for the Appellants made reference to the contents of the impugned charge as framed and stated that the initiation of proceedings including the registration of the case and the consequential framing of charges are certainly impeached on ground referable to the fact that no offence whatsoever is made out. Buttressing his submission on the issue of jurisdiction of this Court under Article 226 of the Constitution of India reference was made by the learned counsel to the decisions of the Hon'ble Supreme Court in **Rajiv Thapar and Others v. Madan Lal Kapoor**<sup>1</sup>, **Amit Kapoor v. Ramesh Chander and Another**<sup>2</sup> and **Umesh Kumar v. State of Andhra Pradesh and Another**<sup>3</sup>. It is argued that on the facts and in the circumstances of the case, there is absolutely no legitimacy in the registration of the case and the consequential framing of charge.

5. The judgments of the Hon'ble Supreme Court referred to above have been rendered in different matters arising out of writ jurisdiction or criminal, appellate or revisional jurisdiction of the High Courts. The sweep and flow of jurisdiction of the superior Courts in terms of Article 226/227 of the Constitution of India as well as Sections 397 and 482 of CrPC have been dealt with. It is the prime principle that there cannot be any prosecution if ingredients requisite to make out an offence are not shown at the initiation of prosecution and finalization of the charge. But in the case in hand, the learned single Judge, has in his wisdom thought it proper to relegate the Appellants to the criminal revisional or supervisory jurisdiction of this Court, be it Section 397 or 482 CrPC. The reasoning of the learned Single Judge in having exercised discretion to refuse

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<sup>1</sup> (2013) 3 SCC 330

<sup>2</sup> (2012) 9 SCC 460

<sup>3</sup> (2013) 10 SCC 591

entertaining the matter under Article 226 of the Constitution of India cannot be held to be without jurisdiction. It cannot be held as illegal. It cannot be held to be groundless. Learned Single Judge cannot be found fault, by us, through this Writ Appeal, for the manner in which the learned Single Judge has exercised discretionary jurisdiction, noticing there is alternative efficacious remedy for the Appellants. We say this for the very simple reason that writ jurisdiction is essential discretionary and there is no constitutional command which obliges the Court to decide all cases in writ jurisdiction even when it is satisfied that the litigant has alternative efficacious remedy.

6. For the aforesaid reasons, we find it unable to hold that the impugned decision of the learned Single Judge is contrary to law on the situation in hand. This writ appeal therefore fails and the same is accordingly dismissed without prejudice to any remedy and relief that may be available to the appellants in accordance with the law, otherwise.

Sd/-

**(Thottathil B. Radhakrishnan)**

**CHIEF JUSTICE**

Sd/-

**(P. Sam Koshy)**

**JUDGE**