

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 479 of 2017**

- Ashwani Kumar Miri S/o Ramadhar Miri Aged About 45 Years R/o Of Village- Devrihapara, Ward No. 4 Kargi Road Police Station Kota, Tahsil-Kota, District- Bilaspur, Chhattisgarh. ---- **Petitioner**

Versus

- Late J. K. Singh, S/o Amresh Singh Through Smt. Runi Singh, W/o Late J K Singh Aged About 28 Years R/o Ring Road No.2 Shantinagar- Bilaspur, Police Station Civil- Line Bilaspur, District- Bilaspur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Ravi Maheshwari with Shri B.L.Sahu, Advocate.
For Respondent	:	Shri Aditya Tiwari, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****30.11.2018**

1. This petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.M.P.) questioning the order dated 21st March, 2017, by which, the Revisional Court, while affirming the order dated 20.06.2016 passed by the Judicial Magistrate First Class, Bilaspur, in Criminal Case No. 8330/2015, has dismissed the revision.
2. Learned counsel for the petitioner submits that the complainant J.K.Singh has expired on 29.02.2016, therefore, upon his death, the complaint was liable to be dismissed, however, the Courts below, while entertaining the application filed under Section 256 of Cr.P.C. have erred in substituting the wife of the deceased, namely, Smt. Runi Singh in place of deceased complainant. He, therefore, submits that the order impugned be set aside.
3. On the other hand, learned counsel for the respondent, while supporting the

order impugned, submits that the complainant has expired on 29.02.2016 during the pendency of the complaint petition and by virtue of Section 256 (2) of Cr.P.C., the Courts below have not committed any illegality in substituting the widow Smt. Runi Singh in place of deceased complainant.

4. I have heard learned counsel for the parties and perused the entire record carefully.
5. A complaint case was filed by the original complainant J.K.Singh against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act of 1881'). During its pendency, he expired on 29.02.2016. Therefore, an application enumerated under Section 256 of Cr.P.C. was moved by his widow, namely, Smt. Runi Singh for her substitution in his place. After considering her application, the trial Court has allowed the same vide its order dated 20.06.2016, affirmed further by the Revisional Court on finding that the widow of the complainant could be substituted in place of her deceased husband. A bare perusal of the provision prescribed under Section 256 of Cr.P.C. would show that the Magistrate is competent to proceed with the complaint even where complainant dies during pendency of complaint.
6. In the present case, a complaint has been filed under the Act of 1881, therefore, on the death of the complainant, the Court may allow his widow to continue with the prosecution of the complaint case filed under Section 138 of the Act of 1881 and the mere death of the complainant cannot ipso-facto terminate the said criminal proceedings.
7. At this juncture, it would be relevant to refer to the decision of the Allahabad High Court in the case of **Habib vs. State of U.P. and Others** reported in **2013 Cri.L.J. 4897** wherein after referring to various decisions of the Supreme Court,

the Allahabad High Court in para-23 has held as under:

“23. From perusal of the aforesaid judgments of the Apex Court, it is now well settled that on the death of the complainant, under Section 256 (2), Cr.P.C. cannot ipso-facto bring about the termination of the criminal proceeding and in that case the learned Magistrate is authorized to exercise his power under Section 302, Cr.P.C. by allowing any person or prosecution agency for conducting of the criminal case merely on the death of the complainant, the complaint filed by him cannot be dismissed nor the accused acquitted or discharged under Section 256 or 258 CrPC.”

8. It is also relevant to refer to the decision of the Supreme Court in the case of ***Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (deceased by L.Rs.)*** reported in **AIR 2005 SC 48** wherein the Supreme Court referring to its earlier decisions in para-10 has held as under:

“10. In the present case, neither heirs of the complainant filed petition under Section 302 of the Code to continue the prosecution nor any permission was sought by them from the competent Court that they should be allowed to continue the prosecution through their power of attorney holders, rather the prayer was made by the power of attorney holders, which is not permissible under law. This being the position, we are of the view that the trial Court was not justified in allowing the petitions under Section 302 of the Code and the High Court has committed an error in confirming the said order which is liable to be set aside and the petitions under Section 302 of the Code are fit to be dismissed giving liberty to the heirs either to make application themselves before the Court concerned to continue the prosecution or apply to the Court to grant permission to them to authorize the power of attorney holders to continue the prosecution on their behalf.”

9. In view of the aforesaid principles, the application filed under Section 256 of Cr.P.C. for bringing on record the legal representative in place of the deceased complainant was rightly held by the Courts below. The order impugned, therefore, deserves to be and is hereby affirmed. Accordingly, the petition is dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge