

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1123 of 2014**

Shankar Sharan Vishwakarma, S/o Late Param Lal Vishwakarma, aged about 70 years, Occupation- Retired Teacher, R/o West Ring Road, Mishan Chowk, Kedarpur Nagar, Ambikapur, Ward No. 14, Police Station, Gandhi Nagar, Ambikapur, District- Surguja C.G.

**----Petitioner****Versus**

Sadhashiv Singh S/o Late Ram Naresh singh, aged about 72 years, Occupation- Advocate, resident of West Ring Road, Mishan Chowk, Kedarpur Nagar, Ambikapur, Wad No. 14, Police Station Gandhi Nagar, Ambikapur, District Surguja C.G.

**---Respondent**


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| For Petitioner | : Mr. Sunil Otwani, Advocate     |
| For Respondent | : Mr. Anand Kesharwani, Advocate |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order On Board****01/05/2019**

1. In a pending complaint filed by the Respondent herein for commission of offences under Section 307, 452, 323, 294, 506 Part-II, 427 of the IPC at pre-cognizance stage, the petitioner/accused appeared and filed an application on 16/07/2013 praying that his proposed prosecution for above-stated offences be dropped as offences are not made out against him, which the trial Magistrate rejected finding no merit holding that cognizance is, yet to taken, therefore, the petitioner/accused cannot be allowed to participate in the proceeding. In the revision, the learned Additional Sessions Judge by its well reasoned and well merited order relying upon judgment of the Supreme Court in the matter of **Chandra Deo Singh v. Prokash Chandra Bose**<sup>1</sup> in which it was held that accused person does not come into picture at all till process is issued held that order rejecting petitioner's application is an interlocutory order, as such, bar under Section 397(2) of the CrPC would be applicable and the revision petition is not maintainable & dismissed, accordingly. Calling

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1 AIR 1963 SC 1430

in question the order of the revisional Court, this petition under Section 482 of the CrPC has been preferred.

2. Mr. Sunil Otwani, learned counsel for petitioner would submit that the impugned order is unsustainable and bad in law. He refers to the order of the revisional Court dated 17/9/2008 to canvass his point.
3. Per contra, Mr. Anand Kesharwani, learned counsel for respondent would support the impugned order.
4. I have heard learned counsel for the parties and considered rival submissions made herein-above and went through the record with utmost circumspection.
5. The petitioner's application for dropping the charges, which are yet to be taken cognizance of, was rejected by the trial Magistrate by order dated 16/7/2013 deciding none of his right(s), if any, as he has no right to participate in trial till process is issued to him as an accused as held by the Supreme Court in **Chandra Deo Singh** (Supra), therefore, order dated 16/7/2013 is nothing but an interlocutory order covered by Section 397(2) of the Code of Criminal Procedure, which was rightly held so by learned revisional Court, warranting no interference in exercise of jurisdiction under Section 482 of the CrPC.
6. Accordingly, the CrMP deserves to be and is hereby dismissed. However, the petitioner is at liberty to proceed in accordance with law.

Sd/-

**(Sanjay K. Agrawal)**  
Judge