

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1050 of 2019

Order Reserved on : 05/12/2019

Order Delivered on : 29/01/2020

1. Deepak Yadav, S/o. Shri Bedram Yadav, Aged About 45 Years, S/o - Village Kasdol, Police Station Kasdol, District Balodabazar-Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Station House Officer, Police Station-Kasdol, District Balodabazar-Bhatapara Chhattisgarh.
2. Tarachand Ratde, S/o - Ram Buddheshwar, Ratde Aged About 43 Years, R/o.Village-Rampur, Police-Station-Basna, District-Mahasamund, Chhattisgarh.
3. Taman @ Tomanlal Sahu, S/o - Itwari Ram Sahu, R/o - Rohasi, Police-Station-Palari, District-Balodabazar-Bhatapara, Chhattisgarh.

---- Respondents

&

CRR No. 438 of 2019

1. Tarachand Ratade, S/o Rambudeshwar Ratade, Aged About 43 Years, R/o Rampur, Police-Station-Basna, District-Mahasamund, Chhattisgarh.
2. Taman @ Tomanlal Sahu, S/o Itwari Ram Sahu, Aged About 26 Years, R/o. Rohasi, Police-Station-Palari, District-Baloda Bazar- Bhatapara Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh Through The Police Station-Kasdol, District-Baloda Bazar, Bhatapara, Chhattisgarh.
2. Deepak Yadav, S/o Late Bedram Yadav, Aged About 45 Years, R/o Village-Kasdol, Police-Station-Kasdol, District-Baloda Bazar, Bhatapara, Chhattisgarh.

---- Respondents

For Petitioners	:Mr. Anish Tiwari, Advocate for petitioner in CRR No.1050 of 2019 and respondent No.2 in CRR No.438 of 2019.
For Respondents	:Mr. Vishnu Koshta with Mr. Shobhit Koshta, Advocate for respondent No.2 & 3 in CRR No.1050/2019 & petitioners in CRR No.438/2019.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

29/01/2020

Heard.

1. Both the revision petitions have been brought being aggrieved by the order dated 8.3.2019 by which the charges were framed against respondents No.2 & 3 who are applicants in CRR No.438 of 2019 under Section 305, 34 of IPC.
2. Petitioner in CRR No.1050 of 2019 submits that his minor son was tortured and instigated by the private respondents because of which he committed suicide. It is submitted that respondent No.2, who is Head Constable in police department, had threatened the deceased for involving him in a case of dacoity and sending him to jail and at the same time he also made a demand of Rs.40,000/- as bribe from the deceased and because of which the minor deceased broke-down under the pressure and committed suicide. A preliminary inquiry was held against respondent No.2 Tarachand Ratade and in which he was found guilty. As no FIR was lodged on the basis of said preliminary inquiry, the applicant had to approach High Court by preferring WPCR No.189 of 2018 and only after passing of order dated 3.4.2018 by the High Court, FIR has been lodged. Grievance of the applicant is this that the learned trial Court failed to appreciate that offence of extortion is also made out even then the charge was not framed for the same, therefore, it is prayed that defect in the impugned order of the Court below be cured by this Court.
3. CRR No.438 of 2019 has been filed being aggrieved by framing of charge against the applicants under Section 305/34 of IPC. It is

submitted that a complaint had been lodged in the police-station against deceased Alok Yadav that he had assaulted, injured the complainant Tomanlal and looted his wallet and cash of Rs.9,000/-. Applicant No.1 in his capacity as Police Officer acted and searched for the deceased and applicant No.2 was the complainant in that case. The deceased never met with applicants and he has committed suicide, therefore, there is no act of instigating, inducing or abetting commission of suicide in any manner done by the applicants. The applicant No.1 being a Police Officer has the power to make inquiry regarding any complaint made and applicant No.2 had a grievance against the deceased, therefore, he had arrived to lodge a complaint against him. The allegation regarding demand of any money from the complainant is totally false and baseless.

Reliance has been placed on the judgment of **Arvind & others v. State of Chhattisgarh in (2014) 2 CGLJ 414**. it is submitted that applicant No.1 is a Police-Officer, therefore, the learned Court below did not have the power to take cognizance in the charge-sheet filed against him. The applicant No.1 has protection under Section 197 of CrPC.

Reliance has been placed on the judgment of this High Court in Dr. Ramesh Kumar Gupta v. State of Chhattisgarh, reported in 2017 SCC OnLine Chh 198 and it is prayed that the applicants in this revision petitions are entitled to be discharged as there is no evidence regarding any single act on the basis of which it can be presumed that they have abetted commission of suicide by the deceased. Similarly the allegation regarding extorting money from the deceased or the complainant is also not supported by the evidence present in the charge-sheet. Hence, the revision petition be allowed and the applicants be discharged from the case.

4. Learned counsel for applicant in CRR No.1050/2019 rebuts the submissions made by the respondents and applicants in CRR No.438 of 2019. Similarly counsel for applicants in CRR No.438 of 2019 rebuts the statement made with respect to CRR No.1050/2019.
5. I have heard learned counsel for the parties and perused the

documents on record.

6. The facts of incidents are these that deceased Alok Kumar Yadav aged about 17 years committed suicide on 24.9.2017. Inquest procedure was conducted, however, no FIR was lodged. Thereafter complainant Deepak Kumar Yadav, applicant in CRR No.1050 of 2019, filed WPCR No.189/2018 before this Court and on the basis of order dated 3.4.2018, FIR was lodged on 11.4.2018 against the respondents/applicants registering the offence under Section 306/34 of IPC. The further facts revealed in the investigation are these that prior to the date of this incident there was a complaint made by applicant Taman @ Tomanlal Sahu in CRR No.438 of 2019 against the deceased for assaulting, injuring and robbing him which was being inquired by applicant No.1 Tarachand Ratade in CRR No.438 of 2019.
7. The morgue intimation was given by complainant Deepak Kumar Yadav on 24.9.2017 in which there is no allegation made against any person. The postmortem report given by the examining doctor also shows the opinion of doctor that the death of the deceased was suicidal.
8. After lodging of FIR, complainant Deepak Kumar Yadav has given statement under Section 161 of CrPC in which he has stated that applicant No.1 in CRR No. 438 of 2019 had visited on 20.9.2017 and informed that his son i.e. deceased, has assaulted and looted Rs.9,000/- from the complainant and also asked whether he will make the refund of the amount looted and the other expenses or not. He responded that he will reply after discussing with his son Alok Kumar Yadav. He has further stated that his brother Prakash informed him that respondent No.1/applicant No.1 is making a demand of Rs.40,000/- on 23.9.2017 and on the next date the deceased committed suicide. Therefore, the complainant was not the person from whom the Head Constable Tarachand Ratade had made a demand of Rs.40,000/-. He was informed by his brother Prakash, who has not been examined as a witness. The other witnesses examined by the police under Section 161 of CrPC have not made any statement. One of the other witnesses examined has stated that in his presence Head Constable Tarachand Ratade had said to Prakash

Yadav that incident has taken place between the complainant and other party and complainant will have be refunded Rs.9,000/- but he will take three times the amount for winding-up the case against the deceased. Similar statement has been given by witness Ashish Kumar Yadav and also Prakash Yadav.

9. On perusal of the whole evidence in the investigation case, it is found that the respondent/applicant in CRR No. 438 of 2019 never gave any instigation to the deceased in any manner before he committed suicide. Although the respondent No.2 is the lodger of complaint against the deceased but the act of lodging of any complaint is not a criminal act. Similarly evidence regarding conspiracy or aiding for commission of suicide is also missing. It is a fact that the deceased was a minor, who had committed suicide, therefore, in case such suicide is abetted that was an offence under Section 305 of IPC but in the absence of any evidence in this particular case there was no reason or *prima facie* ground for framing charge against the respondents under Section 305/34 of IPC. Therefore, the impugned order of framing charge against the respondents in CRR No.1050 of 2019 and the applicants in CRR No.438 of 2019 is allowed and the impugned order of framing charge against the respondents in CRR No.1050 of 2019 is set aside.
10. In respect of revision petition No.1050 of 2019 the trial Court is directed to give consideration on the prayer made by the applicant in CRR No.438 of 2019 and take a decision whether there is evidence present for framing of charge against the respondents for commission of offence of extortion and pass orders accordingly. The proceeding in the criminal case shall continue for compliance of this order.
11. Accordingly, both the petitions are disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge