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HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 719 of 2017

1. Shri Rambrat Patel, S/o Late Radheshyam Patel, aged about 36 years.
2. Shri Mahabalendra, S/o Ramji Patel, aged about 28 years.
3. Shri Shivparika Patel, S/o Rampati Patel, aged about 26 years.
4. Shri Shivkant Patel, S/o Rampati Patel, aged about 23 years.

All the applicants are residence of Village Kailashpur, Police Chouki Wadrafnagar, P.S. Basantpur, District Balrampur-Ramanujganj, Chhattisgarh.

---- **Petitioners**

Versus

1. State of Chhattisgarh through District Magistrate, District Balrampur-Ramanujganj, Chhattisgarh.
2. Shivilal Patel, S/o Tilakdhari Patel, aged about 51 years, R/o Village Pansara, P.S. Basantpur, Police Chouki Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh.

---- **Respondents**

For Petitioners	: Shri Akath Kumar Yadav, Advocate
For Respondent No. 1	: Shri Aditya Tiwari, Panel Lawyer
For Respondent No. 2	: Shri Pawan Kesharwani, Advocate

Hon'ble Shri Parth Prateem Sahu, Judge
Order on Board

20.10.2021

1. This petition under Section 482 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') is filed challenging the order dated 20.02.2017 passed by Second Additional Judge to the Court of Additional Sessions Judge, Ramanujganj, District Surguja – Ambikapur (C.G.) in Criminal Revision No.R-25 of 2016 whereby learned Sessions Judge has dismissed the revision filed by the petitioners.

2. Facts relevant for disposal of this petition are that, on 23.03.2016, at about 6.30 PM, Ramjanam Patel and others have abused and assaulted Shivilal Patel. In the incident, Shivilal Patel suffered grievous injuries. Immediately after the incident, written report was lodged before the concerned Police Station, based upon which, crime was registered at Outpost of Police Station Wadrafnagar. After registration of crime on zero, it was forwarded to jurisdictional Police Station i.e. Police Station Basantpur, based upon which, Crime No.31 of 2016 was initially registered against five persons including petitioners herein. After due investigation, final report under Section 173 of Cr.P.C. was submitted against only one person out of five persons as shown/mentioned accused in First Information Report. Injured thereafter moved an application under Section 190 of Cr.P.C. before the Court of jurisdictional Judicial Magistrate First Class, Wadrafnagar making prayer that cognizance for commission of offence against other persons involved in commission of crime be taken. Based on *prima facie* evidence available in charge-sheet, other accused persons have been shown to be non-applicants No.1 to 5 in the application filed under Section 190 of Cr.P.C.
3. Learned Magistrate upon considering the application filed under Section 190 of Cr.P.C., allowed the application and taken cognizance against other named accused in First

Information Report for the reasons recorded therein. Order dated 06.10.2016 taking cognizance of commission of offence against non-applicants/petitioners, they filed criminal revision before the Court of Additional Sessions Judge, Ramanujganj, which came to be dismissed by impugned order.

4. Shri Akath Kumar Yadav, learned counsel for the petitioners would submit that on 23.03.2016, incident took place between Shivilal Patel and co-accused Ramjanam Patel and due to previous enmity, petitioners have been implicated falsely in the crime. Petitioners have submitted written application before Inspector General of Police on 26.03.2016 pleading therein that petitioners have been falsely implicated. Application/written complaint submitted before the Inspector General of Police was forwarded for inquiry to Sub Divisional Officer (Police), who after conducting inquiry, submitted report stating that involvement in the crime is of Ramjanam Patel only. This clearly shows that petitioners have been falsely implicated. He pointed out that initially injured and his family members have stated that injured suffered accidental injuries and he also took compensation. In First Information Report, Harinath Singh is shown to be one of the witness to the incident. Said eyewitness has not named the petitioners to be persons present on the spot at the time of incident or participated in any manner in the

incident. Similar statement was made by him in statement recorded under Section 164 of Cr.P.C. Petitioner No.1 is an Advocate and he has been implicated falsely on the ground that he is contesting case against the complainant. Learned counsel referred to Annexure P/15, which is an inquiry report dated 30.12.2016 of Sub Divisional Officer (Police) and submitted that in the inquiry, higher officer has found that there is no sufficient evidence of commission of offence against the petitioners. Based on the inquiry report by Sub Divisional Officer (Police), Investigating Agency has rightly submitted charge-sheet against one accused i.e. Ramjanam Patel. Revisional Court has not taken into consideration the report submitted by Sub Divisional Officer (Police) and has erroneously dismissed the revision by impugned order.

5. Per contra, Shri Aditya Tiwari, learned Panel Lawyer representing the State/respondent No.1 and Shri Pawan Kesharwani, learned counsel for respondent No.2 jointly submitted that immediately after the incident of abuse and assault by petitioners and other co-accused Ramjanam Patel, First Information Report was lodged within ½ hour of the incident making allegation of obstructing the way of injured Shivrul Patel while he was travelling on motorcycle, dashing his motorcycle and thereafter, assault upon him by petitioners and other co-accused. Statement of other witnesses were also recorded, which is forming part of the

charge-sheet. Injured suffered as many as nine grievous injuries on his person apart from three simple injuries. Police has recorded statement under Section 161 of Cr.P.C. of witnesses. Based on the nature of offence committed against Shivilal Patel, offence under Section 147, 294, 341 and 323 of Indian Penal Code was registered against all five accused persons. In First Information Report which was lodged immediately after the incident, in commission of offence involvement of other brothers and relatives of Ramjanam Patel is specifically mentioned. Based on written application, Additional Superintendent of Police has further conducted an inquiry, in which, it has been held that sufficient evidence is available against the petitioners and an attempt is made to save them and thereby Investigating Officer has not discharged his duties properly and shows his suspicious conduct. Referring to order passed by Magistrate on 06.10.2016, it is argued that learned Magistrate has considered that report is lodged against five named accused persons. Investigating Officer in final report has mentioned that supplementary charge-sheet will be submitted, if offence is proved against them also. Learned Magistrate has considered entire material available in charge-sheet and rightly allowed the application under Section 190 of Cr.P.C. Learned Revisional Court while considering entirety of facts and circumstances of the case and provisions of law, rightly

dismissed the revision filed by the petitioners, which does not call for any interference.

6. I have heard learned counsel appearing for the respective parties.
7. The only ground raised by learned counsel for the petitioners is that when Senior Police Official based on the application filed by petitioners have conducted an inquiry and found that there is no sufficient evidence available on record against the petitioners, learned Magistrate should not have allowed application filed under Section 190 of Cr.P.C.
8. Perusal of First Information Report, injury report and statement recorded under Section 161 of Cr.P.C. of injured Shivalal Patel as well as complainant Krishna Patel would show that there is mention of names of petitioners also of their involvement in commission of crime. The order passed by learned Magistrate allowing application under Section 190 of Cr.P.C. would show that learned Magistrate has considered the material available in charge-sheet filed under Section 173 of Cr.P.C. only. For registration of crime against any person, it is to be seen whether there is *prima facie* material showing involvement of person in alleged offence or not and it is not to be looked into whether there are sufficient evidence for conviction of accused person.
9. Considering entirety of facts and circumstances of the case and law laid down by Hon'ble Supreme Court in case of

State of Haryana and Others v. Bhajan Lal and Others

reported in **1992 Supp (1) SCC 335**, I do not find any error in the impugned order passed by Revisional Court.

10. For the foregoing reasons, petition being sans merit, is liable to be and is hereby dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Yogesh