

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1286 of 2016**

1. Suresh Kumar Mahto, S/o Bhagwat Mahto, aged about 45 years, Occupation- Driver, R/o Village Tarar, P.S. Daud Nagar, Dist. - Aurangabad, Bihar, Present Address – Village Bonda, P.S. Sariya, Dist. - Raigarh (C.G.)

2. Rajkumar Agrawal, S/o Late Banarsidas Agrawal, aged about 43 years, Occupation – Business, R/o Village Bonda, P.S. Sariya, Dist. - Raigarh (C.G.) [applicants no. 1 & 2]

---- Petitioners**Versus**

State of C.G. through the Station House Officer, P.S. Sariya, Tehsil Baramkela, District Raigarh (C.G.) [Prosecution/Non-applicant]

----Respondent

For Petitioners	: Mr. Rakesh Pandey, Advocate.
For Respondent/State	: Mr. D.P. Singh, Dy. Advocate General.

Hon'ble Shri Justice Narendra Kumar Vyas J.**Order On Board****22/09/2021**

(1) The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (henceforth "Code") challenging the legality and propriety of the order dated 19.10.2016 passed by learned Additional Sessions Judge, Sarangarh, District Raigarh in Criminal Revision No. 12/2016 by which the learned Revisional Court has dismissed the revision by affirming the order dated 26.07.2016 passed by Judicial Magistrate, First Class, Sarangarh in Criminal Case No. 26/2016.

(2) The Facts as projected by the petitioner is that on 07.02.2016 at about 8.45 pm the police registered the FIR under the Crime No. 26/2016 for commission of offence punishable under Section 304-A of IPC against unknown persons on the information received from Kartik Ram Manjhi *inter*

alia on the ground that on 7.2.2016 at about 12 hours Nageshwar Manjhi (brother-in-law of the informant) and Vishnu Manjhi (son of informant) had gone to the house of in-laws of informant at village Kansidih and when they were returning by motorcycle at about 2 pm near Village Vishwaspur – Kudargarhi turn, some unknown vehicle dashed them and as a result thereof, both had died on the spot itself. Thereafter, the police recorded statements of Kartik Ram Manjhi, Prem Lal Manjhi, Duleshwar Manjhi and Rambhrosa Nishad under Section 161 of the CrPC on 9.2.2016 and the police firstly registered Dehati Nalishi on 7.2.2016 at about 3.20 pm against unknown persons. During investigation, the police recorded statement of Gopinath Sidar and Pranmati on 21.2.2016. According to them, one trailer bearing registration No. CG-10-M./0240 had dashed the two deceased persons and they known to the driver.

(3) After usual investigation, the police filed charge-sheet against the petitioners on 4.11.2016 for committing the offence under Section 304-A of IPC and seized the trailer of petitioner No. 2 bearing registration No. CG 10 M 0240.

(4) The petitioner No. 2 made a complaint before the Superintendent of Police, Raigarh on 25.02.2016 stating *inter alia* that his trailer bearing registration No. CG 10 M 0240 has been falsely implicated in the case and prayed for further investigation in the matter.

(5) Pursuant to the direction of the Superintendent of Police, Raigarh, Sub-Divisional Officer (Police), Sarangarh after due enquiry on the matter, submitted a report before the SP, Raigarh on 27.4.2016 to the effect that vehicle of respondent No. 2 was not involved in the commission of offence as there is no entry of vehicle No. CG 10 M 0240 and the location of the cell-phone of the driver – Suresh Kumar Mahto was different from the place of incident. It has also been held that police personnel has conducted defective

investigation in the matter.

(6) Thana Incharge, Police Station Sariya, District Raigarh has made an application before the Judicial Magistrate, First Class, Sarangarh, District Raigarh stating that there is defect in the prosecution case, therefore, exonerate the driver of the vehicle namely Suresh Kumar Mahto from the charges and the said vehicle, which was seized, be also released. The application filed by the police was rejected on 26.07.2016. The operative part of the order is extracted below:-

“उपरोक्त विवेचन से प्रकरण की विवेचना में विवेचक द्वारा ऐसी कोई त्रुटि कारित किया जाना दर्शित नहीं है जिससे प्रकरण में जप्तशुदा वाहन सी.जी. 10 एम. 0240 की जप्ती एवं आरोपी सुरेश महतो पिता भागवत महतो कि गिरफ्तारी निरस्त किये जाने का आधार प्राप्त होता हो । अतः प्रस्तुत आवेदन अस्वीकार कर निरस्त किया जाता है तथा थाना प्रभारी को प्रकरण में विवेचना संपन्न कर विधिवत् अग्रिम कार्यवाही किये जाने हेतु निर्देशित किया जाता है ।”

Thereafter, the petitioner along with the accused has preferred a revision petition. The learned Revisional Court found that no irregularities and illegality has been committed by the learned Judicial Magistrate First Class while passing the order dated 26.07.2016 dismissed the revision petition.

(7) The driver of the vehicle and owner of the vehicle have filed the present CRMP assailing these order.

(8) When the question posed to the learned counsel for the petitioner that how the petitioner No. 2, who is owner of the vehicle, can aggrieve with the rejection order passed by the learned Judicial Magistrate first Class as affirmed by the Revisional Court, he would submit that revision petition so far as it relates to the petitioner No. 2 – Rajkumar Agrawal is not maintainable.

(9) From perusal of record, it is quite clear that no order, by which the petitioner No. 2 was aggrieved, has been passed by JMFC, Sarangarh as well as by Revisional Court, therefore, the instant petition so far as it relates to petitioner No. 2 is neither maintainable before this Court nor before the

Revisional Court, as such the petition filed by petitioner No. 2 is liable to be dismissed on this count.

(10) This Court has also examined the contention of learned counsel for the petitioners with regard to petitioner No. 1, he would submit that the police in its application filed before Judicial Magistrate, First Class on 6.6.2016 has categorically given a finding that due to defective investigation committed by the Constable 210 – Ramprasad Baghel, the investigation has not been carried out properly, therefore, the learned Judicial Magistrate should have allowed the application as according to Section 36 of Cr.P.C., the higher Authority can issue direction for further investigation. The learned Judicial Magistrate First Class after examining the diary has given a following finding, which reproduced below :-

“डायरी प्रविष्टि दिनांक 23.02.16 अनुसार घटना के प्रत्यक्षदर्शी गवाह गोपीनाथ सिदार व उसकी पत्नी प्राणमति सिदार के कथन की तस्दीक थाना प्रभारी श्री गोपाल धुर्वे द्वारा की गई जिसके पश्चात् वाहक क्र. CG 10 M 0240 के चालक सुरेश महतो बंजारी केशर बोदा द्वारा घटना करना अपराध प्रमाणित पाए जाने से पता तलाश किया गया । वाहन चालक सुरेश महतो पिता भागवत महतो से समक्ष गवाहो कुबेरचंद केशरवानी व गजपति उनसेना के घटना के संबंध में पूछताछ करने पर सुरेश महतो ने जुर्म स्वीकार कर घटना दिनांक 07.02.16 को कुधरगढी मोड पर एक्सीडेंट कर गाडी को भगाकर सीधा जिन्दल गिट्टी खाली करना तथा रात्रि वहा से फ्लाई ऐश लेकर टिमरलगा खाली कर दूसरे दिन गाडी को धोकर चलाना तथा मालिक को जानकारी नहीं बताने की प्रविष्टि दर्शित है ।

जप्त पत्रक अनुसार दिनांक 23.02.16 को सुरेश महतो पिता भागवत महतो से समक्ष गवाह कुबेरचंद केशरवानी व गजपति उनसेना के एक टाटा 10 चक्का डम्पर सफेद केबिन नीला बाडी पंजीयन क्रं. CG 10 M 0240 चे०नं० 396522BSZ205715, इं०नं० 70B62550334 मय चाबी आर.सी. बुक, बीमा म्याद 19.06.16 मध्य रात्रि तक तथा चालक सुरेश महतो का ड्रायविंग लायसेंस क्रं० 3870/06 जारी दिनांक 30.03.12 झारखण्ड सरकार जप्त किया जाना दर्शित है । गिरफ्तारी पत्रक से सुरेश महतो पिता भागवत महतो को दिनांक 23.02.16 को 17:30 बजे गिरफ्तार किया जाना तथा डायरी से जमानत पर रिहा किया जाना दर्शित है ।”

(11) Learned counsel for the petitioner is not able to point out the perversity or illegality in the findings recorded by the learned Judicial Magistrate in its order as mentioned above, therefore, the learned Revisional Court has rightly rejected the Revision petition filed by the petitioner No. 1 also on the count that no material illegality or irregularities has been committed by learned Judicial Magistrate First Class in rejecting the said application. This Court has also enquired the facts and also call the diary of the case and diary of the case would fortify the findings recorded by the learned Judicial Magistrate First Class as affirmed by the Revisional Court, therefore, there is no illegality or perversity in the impugned order warranting interference under Section 482 of the Cr.P.C. by this Court.

(12) Thus, the present CRMP on two counts i.e. one is not maintainable so far as it relates to petitioner No. 2 *whereas* so far as it relates to petitioner No. 1, the petition Cr.M.P., being devoid of substance, is liable to be and is hereby dismissed.

(13) This Court has granted interim protection to the petitioners vide order dated 24.11.2016. Interim relief granted on 24.11.2016 was continued till today. The same shall stand vacated. The trial Court is directed to proceed further with the Criminal Case No. 1236 of 2016 and shall make all endeavour to conclude the trial of the case expeditiously preferably within a period of one year from the date of receipt of certified copy of this order.

(14) With the aforesaid direction and observation, the present CRMP is dismissed. No order as to costs.

Sd/-

(Narendra Kumar Vyas)
Judge