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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on : 29.05.2023*

+ CRL.REV.P. 210/2021 & CrI.M.A. 10122/2021

RAJINDER SINGH AHUJA & ORS.

..... Petitioners

Through: Mr. Hrishikesh Baruah, Mr. Joy
Banerjee & Mr. Kumar Kshitij, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Tanmaya Mehta & Mr. Lalit
Valecha, Advs. for Complainant.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. Petitioners have preferred the present revision petition against an impugned order dated 25.06.2021 passed by learned Additional Sessions Judge-04 (hereinafter referred to as 'ASJ'), District South-East, Saket Courts, New Delhi in Criminal Revision Petition No. 892/2019. Vide the afore-said order, the learned ASJ had partly allowed the criminal revision petition against the order impugned therein dated 11.11.2019, passed by Shri Gagandeep Jindal, learned Metropolitan Magistrate (hereinafter referred to as MM), Saket Courts in CC No. 5661/2018, by which the complaint filed by the present respondent No.2 was dismissed under Section 203 of the Code of Criminal Procedure (Cr.P.C.).

1.1 Learned ASJ had directed the parties to appear before the learned MM, who was ordered to permit further examination of any other witness(s), if sought for by the complainant, and thereafter pass a reasoned order in



view of the observation made in the order dated 25.06.2021 passed by the learned ASJ.

1.2 Feeling aggrieved, the present petitioners have filed this criminal revision petition.

1.3 The case, in nutshell, of the petitioners is that the daughter of the petitioner No.1, namely Ms. Pavni Ahuja, got married to the son of respondent No.2, namely Mr. Amrinder Singh Sodhi, on 24.04.2011. Certain disputes arose between petitioners no.1's daughter and respondent no.2's son and Ms. Pavni Ahuja left her matrimonial home and started living at her parental home, where she died on 25.02.2015. It is a case of an unnatural death.

1.4 Petitioner No.1 reported the matter to the police and FIR No. 94/2015, Police Station: Greater Kailash under Section 498A, 304-B, 354A, 34 of Indian Penal Code (IPC) was registered and during investigation respondent No.1, his wife and son were arrested and they remained in judicial custody for a long time. On 18.08.2015, they were granted regular bail by the District Court. The charges were framed against accused persons on 03.12.2015 under Sections 304B, 498A & 34 of Indian Penal Code, 1860 (hereinafter referred to as IPC).

1.5 Respondent No.2 filed a revision petition challenging the order framing charge and the said petition was numbered as Criminal Revision Petition No. 248/2016. The other co-accused persons filed similar petitions. Later on the revision petition No.248/2016 was dismissed as withdrawn. In the criminal case from 2016 to 2020, about 18 witnesses were examined and cross-examined.



1.6 It is further stated that in the meantime on 27.06.2018, respondent No.2 filed a criminal complaint along with an application under Section 156 (3) of Code of Criminal Procedure before the learned M.M. claiming therein that he was earlier not aware about the circumstances leading to the death of Ms. Pavni Ahuja and certain lapses in investigation were pin-pointed. The present revision petitioners were arrayed as respondents/proposed accused. The said complaint was filed under Section 302, 201, 465, 467, 469, 471, 120 B and 34 IPC. This complaint was dismissed on 15.10.2018 along with an application under Section 156(3) Cr.P.C.

1.7 Being aggrieved, the present respondent No.2 filed Criminal Revision Petition No. 77/2018 before the Sessions Court and vide order dated 18.04.2019, the Sessions Court held that the complaint cannot be dismissed without undergoing the procedure of recording the complainant's evidence and therefore, the matter was remanded back to the Court of learned M.M. for recording of the same. Respondent No.2 examined himself as CW-1; Mr. Sunil Kumar-Ahlmad of the Court of Shri Sandeep Yadav, ASJ was examined as CW-2, who produced the record of certain documents filed in case FIR No. 94/2015; Dr. L.C. Gupta, Specialist Forensic Medicine and Toxicology-Aruna Asaf Ali Hospital Mortuary was examined as CW-3 in CC No. 5661/2018.

1.8 Learned Magistrate again rejected the complaint by a detailed order dated 11.11.2019. Respondent No.2, being aggrieved by passing of the order dated 11.11.2019, preferred Criminal Revision Petition No. 892/2019 before the Sessions Court. Vide impugned order, the learned Sessions Judge, was pleased to remand the matter again to learned Trial Court.

1.9 The said order dated 11.11.2019 is being challenged by the petitioners



on the grounds that the order passed by learned ASJ is illegal, incorrect, perverse and erroneous both in facts and in law; the order was passed by the learned ASJ in mechanical manner without minutely examining the circumstances; no specific reasons have been given by the learned ASJ while partly allowing the revision petition; the order of remand by learned ASJ is completely without jurisdiction. It is further submitted that the learned ASJ has acted beyond the revisional jurisdiction; there is no material to support the conclusion arrived at by the learned Session Court and the same is without any foundation; moreover the conclusion arrived at by the learned Session Court is not even alleged by respondent No.2 in the revision petition; the argument of the present petitioners were not considered; the complaint of respondent No.2 is nothing but a gross abuse of the process of law; the main purpose of the complaint filed by respondent No.2 is to entangle the prosecution witnesses as accused and thereby impede the machinery of justice and he has tried to establish his defence by getting the evidence of the witnesses recorded in the complaint filed by him and the entire case set up by the complainant is essentially his own defence, whereas his defence statement is to be recorded under Section 313 Cr.P.C. in the case lodged by the police at the appropriate stage and the law laid down by various Courts has not been rightly appreciated by the learned ASJ.

1.10 It is further averred by petitioners that the learned ASJ has failed to appreciate that the case set up by respondent No.2 is not a cross-case to the case set up in FIR No. 94/2015; moreover respondent No.2 is not aware of the circumstances of the death of Ms. Pavni Ahuja and he became aware of the circumstances of her death after receiving the charge-sheet; none of the witnesses examined by respondent No.2 were aware about circumstances



leading to death of deceased Pavni Ahuja and except for their oral testimonies, rest of the material submitted before the learned Metropolitan Magistrate was the evidence in case FIR No. 94/2015 and the evidence in one case cannot be taken as evidence in another case; moreover, only part of evidence cannot be appreciated in another case; the impugned order is perverse and the complaint as framed is not maintainable, the complaint nowhere states that who committed the offence; and complaint cannot include a police report and the said judgment has been passed by the learned ASJ on the basis of surmises and conjectures.

1.11 In view of the above, it has been prayed that the impugned order dated 25.06.2021 in Criminal Revision Petition 892/2019 be set aside.

2. Notice was issued in this petition on 08.07.2021 and in the meantime, learned Magistrate was directed not to pass any final order till the disposal of the present petition.

2.1 Status Report has been filed by the State in which proofs of death, registration of FIR, framing of charge, filing of complaint by respondent no.2 regarding the same incident, dismissal of the complaint and remand back of the matter again by the learned ASJ for recording of evidence was reiterated.

3. Petitioner as well as the respondent No. 2 have filed written submissions apart from the filing copies of the citations relied upon by the respective counsel.

4. I have heard the learned counsel for the petitioners, learned APP for the State and learned counsel for respondent No. 2 and my considered view is as under:-

4.1 The impugned order before this Court was passed in Criminal



Revision No. 892/2019 on 25.06.2021. Revisionist before learned Sessions Judge, who is respondent No. 2 herein, had filed a criminal complaint before the learned Metropolitan Magistrate (MM) being C.C.No. 5661/2018 regarding death of his daughter-in-law and the said complaint was dismissed on 11.11.2019 by the learned MM. The complainant (respondent No. 2 herein) had challenged the said order before the learned Sessions Court. After hearing both the parties, the learned Sessions Judge had set aside the order impugned before him and had remanded back the matter to the Court of learned MM for considering the complainant afresh and allowing respondent No. 2 herein, to further examine the witnesses. Learned Metropolitan Magistrate was directed to pass a reasoned order in the light of observations made in the said order dated 25.06.2021. The reasoning given by the learned Sessions Judge to reach to this conclusion is reproduced hereunder:-

“ In my considered view the Ld M.M. had completely misdirected himself or rather I may say so completely went off the tangent while appreciating the evidence led in this case:

i) First and foremost fact which apparently weighed in his mind was that they - the revisionist and his family were facing trial in an offence U/s 304-B IPC which matter was subjudice before the Ld. ASJ.

Obviously, this, in my humble opinion, led him to start with the proposition that the entire pre summoning evidence is falling from the mouth of the accused persons and hence tainted. This is the recurrent theme in the impugned order/ there is a creeping overhang of the said facet.

ii) In this regard I may note that the right to lead pre summoning evidence in support/ to substantiate the averments made in the complaint flowed from the orders passed by the Ld. ASJ inasmuch as the Ld ASJ had specifically enabled the complainant to step into the witness box and to lead evidence accordingly.



iii) In this regard I may add that the basic/ cardinal principle of criminal jurisprudence is that the accused is deemed to be innocent unless and until proven to be guilty. Notwithstanding the fact that the revisionist is facing trial in a case U/s 304-B IPC outrightly disbelieving his pre summoning evidence on the pretext that he is facing trial would not be proper and would be a travesty of justice. It also needs to be re-emphasized that even the accused has a right to lead defence evidence, which for all purposes would be deemed to be of same character as that of a prosecution witness and no taint whatsoever is attached to the evidence of the accused in any criminal trial. Reference in this regard can be made to the leading judgment of **Doodhnath Pandey v/s State of U.P. (1981) 2 SCC 166**. Salient observations are as here under:

"Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses"

In Munshi Prasad vs. State of Bihar (2002) 1 SCC 351
Hon'ble Apex Court held as under:

3.... Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal and treatment as that of prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par as that of prosecution – a lapse on the part of defence witnesses cannot be differentiated and be treated differently than to the prosecutors' witnesses."

Thus, the version of the complainant/revisionist is to be given the due weightage and duly considered/ appreciated akin any other witness.

iv) Further there is no bar/prohibition qua what the accused can canvas at the earlier stage - he need not wait till the trial is concluded and his turn comes to explain the incriminating evidence against him i.e. the stage of recording of statement of accused U/s 313 Cr.PC or to lead defence evidence. There is no statutory prohibition or a taboo as to his filing a complaint case and to give a counter narrative to prove his innocent or otherwise explain his stand in contradistinction to the prosecution version. In simpler words he cannot be gagged and asked to face the trial completely



and wait for his turn. At the cost of repetition, he has been specifically granted the opportunity to lead evidence in support of his complaint as per the orders of the Ld. ASJ. This I am only re-emphasizing for the reason the pre summoning evidence is not to be brushed away merely because the complainant/ revisionist is facing trial in a case U/s 304 B IPC.

9.1 The death of the deceased Pavni- the legally wedded wife of Amrender Sodhi @ Sumit took place in the parental house and not in the matrimonial house. Obviously in these circumstances to contend or to expect that there would be any direct evidence to substantiate the allegations/averment made in the complaint would be not only implausible but would be evaluating the case on an unrealistic yardstick.

The contention of the Ld. Counsel for the opposite party/respondents that the evidence of the State case i.e. the cross examination cannot be used herein - as sought to be done by the complainant. However, at the same time in my opinion the prosecution version or the documentary evidence collected therein (State case) also could not have been treated as gospel truth for rejecting the evidence led in the complaint case. Each case has to be decided on the basis of the evidence led therein/ circumstances parabolized.

Delving on this aspect the Ld. M.M ought to have confined himself in appreciating the evidence in the context of the Penal provisions under which summoning has been sought for i.e. to gauge the need and sufficiency of issuance of process/proceeding further.

9.2 The contention of the Ld. Counsel for the respondents that midway during the trial the complaint case has been filed by the Revisionist and the same is untenable - the said contention does not hold any water for two reasons. There is no limitation qua the offences under which summoning is sought for. Secondly it is only upon the elaboration of the evidence or upon the evidence having been led such facts as alleged may have emerged. In any case on this issue the complaint cannot be discarded/dismissed.

Sh. Rishikesh Barua contended that in view of the judgment of Hon'ble Mr. Justice V. K. Jain in case titled as **Mohd. Salim V/s State reported in 175(2010) DLT 473** particularly on account of the observations made in para no. 29 the present complaint does not lie.

In fact, if I read the entire judgment, it does not lay down the

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principle as canvased by Ld. Counsel for the respondent. First of all, the Ld. M.M. had refused to register the FIR on the basis of the complaint of the revisionist. The said order was confirmed by the Court of Sessions. Thus, it is not a case wherein a second FIR was lodged Secondly even in the said judgment para no. 28 the reasoning has been stated as here under:

“This prohibition, according to the Supreme Court, does not apply the counter complaint by the accused in the first complaint or on his behalf alleging the different version of the said incident. Allowing the appeal the Supreme court, inter alia held aa under :

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T. T. Antony case this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter- complaint is permissible.”

9.3 Dehors the aforesaid coming to specific observations which have been made by the Ld. M. M. in the impugned order which to my mind are patently erroneous. The Ld. M. M. has opined that this court cannot comment upon the injuries as reflected in the post mortem report because the matter in subjudice before the Ld. Sessions Court. No doubt the Ld. M. M. ought to have been circumspect inasmuch as another case is pending however in the succeeding paragraph number 17 Ld. M.M. has concluded as to the correctness of the FSL result filed by the Investigating Agency in the other case. It needs no gain saying that both these observations cannot gel together. The Ld. M.M. could not have brushed aside the evidence led in the present case particularly the evidence of forensic expert by making such an observation.



The gist is that the Ld. M.M. has chosen to appreciate the case of the complainant upon the evidence collected by the Investigating Agency in the said FIR. This to my mind is an error which has vitiated the order.

9.4 Ld. M.M. has also rejected the version of the complainant on the premise that non examination of the security guard, non seizure of CCTV footage are the deficiency in investigation. Now I fail to understand the import of such a comment for the reason that the Ld. M.M. is not the Ld. ASJ conducting the trial who could have so stated or opined. It is not the case of anyone that the said aspects were "deficiencies in investigation." The complainant had asserted that non examination of security guard, non seizure of CCTV footage and not immediately making the PCR call are suspicious circumstances or in any manner the respondent intended to conceal something.

Such observations that said aspects amount to deficiency of investigation otherwise also not only prejudices the complainant herein but also in a manner coming from an authority prejudice other as well.

9.5 Furthermore, it is the admitted case of the prosecution itself that the place was washed by Mintoo Mathur and there is a DD No. 28-A recorded. To outrightly exclude the same from the zone of consideration is also untenable and contrary to the record. So much so the observation "Neither the place of fall of Pavni was cleaned by any of the respondent in the presence of CW1 nor such instruction was given by the fat her of deceased Pavni to Mintoo Mathur in the presence of CW1" is uncalled for. The complainant's testimony is itself based on the DD No.28-A which to my mind cannot be denied by anyone.

9.6 Coming to a specific fact which needs no amplification that a mobile phone is a bundle of information in today's world. t speaks a lot about the person who uses it. His thoughts, his actions, his relations, his interface with all are immersed in it. The said mobile phone of deceased Pavni was locked and therefore the information could not be sieved/retrieved. Nonetheless certain facts remain on record that a call was made from the mobile number of Pavni to another phone number after her death. Obviously, a dead person cannot be expected to call and this call was made by somebody who was aware about the pin code/pin lock or any other lock in the phone The Court had summoned the officer of the record from Airtel who had revealed that the mobile phone was issued to



Pramod Kakkar s/o Dilip Singh Kakkar. The notice was issued to said Pramod Kakkar however he remain unserved

9.7 In my opinion the Ld, Magistrate ought to have completed this exercise inasmuch as this is indeed a suspicious circumstance as to how a call was made to an unknown person or to a person whose identity could not be ascertained. In any case if the mobile phone has been used after the demise of the deceased Pavni Ahuja this aspect ought to have been completely enquired to bring it to a logical end.

9. 8 Ld. Counsel for Revisionist had argued that the Revisionist and his family have been charged for the offence U/s 304-B IPC. However, the ingredients thereof are not made out.

I am of the firm view that this Court is only to exercise its revisional jurisdiction in respect of the order under challenge to determine its legality, propriety and the correctness of the same being in accordance with law. Hence, no other observation on any aspect is required for. The right manner is to treat both the cases separately and to decide either of them on the evidence led in each of them.

10. Considering the totality of facts and circumstances in my opinion the impugned order does not stand judicial scrutiny and is liable to be set aside in exercise of revisional jurisdiction Ordered accordingly.

11.The parties are directed to appear before the Ld. Court on 07.07.2021. The Ld. M.M. to permit the further examination of any other witness(es), if sought for by the complainant and thereafter pass a reasoned order in the light of the aforesaid observations within a period of three months thereafter latest by 07.10.2021.”

5 The contention of the learned counsel for the petitioner before this Court is that since the learned ASJ was exercising the revisional jurisdiction, so the jurisdiction of the said Court was very limited. The revisional power of an Addl. Sessions Judge/Sessions Judge is described in Section 399/400 Cr.P.C.:-

399. Sessions Judge' s powers of revision.

(1) In the case of any proceeding the record of which has been

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called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of a person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.”

“Section 400 in The Code Of Criminal Procedure, 1973

400. Power of Additional Sessions Judge. An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.”

5.1 Learned ASJ exercises the power of High Court in respect to revision in terms of Section 397 of of Cr.P.C., which is reproduced as under:-

“397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.



(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

5.2 The learned ASJ has to satisfy himself regarding the correctness/legality or propriety of any finding or order passed by the Court of learned MM and regularity of any proceedings pending before such Court. Learned counsel for the petitioners has relied upon the judgment of Hon’ble Supreme Court in *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and Ors.* reported as (2015) 3 SCC 123 in this regard. It is argued by the petitioners that the learned MM had concluded in para 12,13 and 14 of the order dated 11.11.2019 that there was no evidence on how the deceased was murdered and the present accused was not even present near deceased/Pavni Ahuja, at the time she jumped from the terrace. So, the foundation of the order dated 11.11.2019 is based on material facts and evidence. It has been denied that the learned MM was weighed by the fact that the complainant was facing a criminal prosecution, wherein the witnesses were produced by the complainant as per his own desire and the directions to permit the complainant to examine further witnesses is beyond the revision petition filed by the complainant. Moreover, the learned ASJ has not appreciated judgment of this Court in *Mohd. Salim v/s State 175(2010) DLT 473*, wherein it was held that the accused cannot file a complaint after investigation of FIR was complete and defence of the accused cannot be examined at any stage before recording his statement under Section 313 Cr.P.C. As per the petitioners, the complaint is a gross abuse of the process of law as there is delay of 3 years and 8 months in lodging the complaint and no plausible explanation has been offered for the



said delay. It is submitted that the examination of defence at this stage is contrary to the scheme of Cr.P.C. The accused has a right to lead his defence after his statement under Section 313 Cr.P.C. is recorded. Moreover, the case set up by the revision petitioner is not a cross-case and it is not even a complaint as per Section 2D of the Cr.P.C.. The complainant had relied only upon the narration of evidence placed in case FIR No. 94/2015 registered against him. The facts leading to the accident have not been described in the complaint as the complainant himself says that he is unaware of the circumstances leading to the death of the deceased. A complaint cannot include a police report. The version of the revision petitioner before the learned ASJ does not have any independent existence and it is not a cross-case as settled by Hon'ble Supreme Court in **Anju Chaudhary Vs. State of Uttar Pradesh** reported as (2013) 6 SCC 384.

5.3 It is also submitted by petitioners that the material placed on record is not even an admissible material as all the three witnesses examined by the complainant were not aware of the circumstances leading to the death of the deceased and all the exhibits are from the record of Sessions case in FIR No. 94/2015. Witnesses had only produced the inquest report, MLC and FSL report. Moreover, consideration of material placed on record is barred by law and testimonies of the witnesses show that the petitioners are not guilty of any offence.

5.4 Petitioners have also submitted that the present Revision Petition is maintainable as it was not the present petitioners, who had filed the revision petition before the learned ASJ. Reliance has been placed on **Wajid Mirza Vs. Mohd. Ali Ahmed and Ors** reported as (1982) CrL LJ 890 and **Inayatullah Rizwi Vs. Rahimatullah and Ors.** reported as (1981) CrL LJ

**139: 1981 MahLJ 249).**

6. In the brief synopsis filed on behalf of respondent No. 2, it is submitted that there is no illegality or infirmity in the order dated 25.06.2021 passed by the learned ASJ, who has duly exercised the revisional jurisdiction. It has been submitted that the charge-sheet in case FIR No. 94/2015 was sent for scrutiny to the prosecution branch and it was observed that there was no legal evidence to attract the alleged sections; there is no evidence to conclude that the victim had committed suicide and to rule out that she was not murdered and there is relevancy of personal diary placed on record etc. To overcome these lacunas, one Mr. Sanjay Kumar Gupta was introduced later on as a witness, who had not witnessed the unfortunate incident and whose statement was recorded under Section 164 Cr.P.C. on 18.05.2013, i.e., almost three months after the date of incident on 25.02.2013.

6.1 It is further submitted on behalf of respondent No. 2 that Dr. Deepak Prakash, who conducted the post-mortem, had also stated in his testimony that some of the injuries on the body of the deceased may have been caused when a person tries to defend oneself in case of being physically attacked by another person and the grazed abrasion caused on the body of the victim is caused when one is dragged over a hard rough surface and injury No. 1, which is sufficient to cause death, can be caused on account of direct violence suffered by the victim at the behest of an attacking assailant with a blow given with a heavy blunt object. Even Dr. L.C. Gupta, who was examined as CW-1 in the complaint case, had opined that injury No. 1 on the head was caused by sufficiently heavy weapon and some other injuries are possible when a person was defending oneself while someone is



attacking him or her while other injuries are possible only when somebody dragged a person on hard surface. So, the post-mortem findings and the injuries sustained by the deceased are consistent with mode of death being homicidal.

6.2 It is further submitted on behalf of respondent No. 2 that learned ASJ rightly observed that even if the complainant was facing a trial, his testimony cannot be outrightly disbelieved. Moreover, while allowing the revision petition, learned ASJ had just remanded the matter back to the learned M.M., allowing the complainant to examine further witnesses for just and proper adjudication of the case and to meet the ends of justice. The present revision petitioners were heard by the learned revisional Court and the second revision petition has a very limited scope and no prejudice has been caused to the present petitioners by the order passed by the learned ASJ remanding back the matter for further examination of the witnesses by the complainant. The respondent No. 2 wishes to unearth the truth.

6.3 Moreover, the judgment relied upon by the learned MM for dismissing the application under Section 156(3) Cr.P.C. vide order dated 15.10.2018 titled as *Amrutbhai Shambubhai Patel Vs. Sumanbhai Kantibhai Patel* passed in **Crl. Appeal No. 1171/2016**. The said judgment has been overruled by the three Judges Bench of Hon'ble Supreme Court in the matter of *Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat & Anr.* reported as **2019 SCC OnLine SC 1346** decided on 16.10.2019. The respondent No. 2 has relied upon the judgment in the matter of *Vanitabai & Ors. v. State of Maharashtra & Anr.* reported as **III (2017) DMC 642 (DB) (Bom.)**. Learned counsel for respondent No. 2 has also relied upon the judgment titled *State of M.P. v. Mishrilal (Dead) and Ors.* (2003) 9 SCC



426. The relevant paragraph Nos. 7& 8 of this judgment are reproduced hereunder:-

7. Undisputedly, accused Mishrilal lodged the report to the police vide Ext. D-8 over the same incident which happened on 5-3-1987, in which he had clearly stated that the injuries were sustained by him and his son Madhusudan at the hands of the prosecution party. It is also not disputed that on the strength of the complaint lodged by Mishrilal, investigation was also carried out and challan was filed, namely, Crime Case No. 52 of 1987 under Sections 147, 148, 149 and 324 IPC against the prosecution party which is pending for disposal before the learned Judicial Magistrate, First Class. In the said challan, the prosecution party is stated to be the aggressor. This court in *Nathi Lal v. State of U.P.* pointed out the procedure to be followed by the trial court in the event of cross-cases. It was observed thus: (SCC pp. 145-46, para 2)

“2. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross-cases and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross-case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in the particular case without being influenced in any manner by the evidence or arguments urged in the cross-case. But both the judgments must be pronounced by the same learned Judge one after the other.”

8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in *Nathi Lal* case. The cross-cases should involved. The rational behind this is to avoid the conflicting judgments over separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against



both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigation officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”

6.4 Reliance is also placed on behalf of respondent No. 2 on ***Krishnan & Anr. Vs. Krishnaveni and Anr 1997(4) SCC 241; Doodhnath Pandey v/s State of U.P. (1981) 2 SCC 166; Munshi Prasad vs. State of Bihar (2002) 1 SCC 351.***

7. While arguing, the first emphasis was laid down by the learned counsel for the petitioners on the ground of delay and latches. As per him, the criminal complaint was filed by respondent No. 2 after more than three years from the date when the unfortunate incident had taken place. The case of the respondent No. 2/complaint is that he came to know about the facts of the case only when the charge-sheet was filed in the year 2015. Even then the complaint was filed in the year 2018, whereas the date of incident was 25.02.2015 and charge-sheet was filed in the same year. I am of the considered view that since there is no limitation provided for filing a complaint in death cases, hence the fact that the present respondent No. 2/complainant took more than two years to approach the Court in itself is not fatal to the complaint filed by him and the complaint cannot be dismissed on this ground only.

8. It is further submitted on behalf of the petitioners that the complainant himself is an accused and he can only lead evidence in his support after getting his statement recorded under Section 313 Cr.P.C.. Reliance is placed on the judgement titled as **Mohd Salim v. State** reported as **2010 SCC**



OnLine Del 1053, especially on para Nos. 29, 35 & 39, which are reproduced hereunder:-

“29. The decision in the case of *T.T. Antony* (supra) came up for consideration before a three-Judge Bench of the Supreme Court in the case of *Upkar Singh* (supra). In that case, a complaint with the police was lodged by the first respondent before the Supreme Court against the appellant before the Court and some other persons. Crime No. 48 of 1995 was registered on the basis of that complaint. The appellant before the Supreme Court claimed that he too had lodged a complaint with respect to the very same offence against the respondents, but his complaint was not entertained by the police. He tried to approach the Superintendent of Police and District Magistrate, but could not succeed in getting the FIR registered. Thereupon, he filed a petition under Section 156(3) of the Code of Criminal Procedure, whereupon the Magistrate directed registration of a case against the persons named as accused in the complaint filed by the appellant. Crime No. 48 of 1995 was accordingly registered by the police. The order of the Magistrate directing registration of the complaint was challenged by the first respondent, by filing a Revision Petition before the Additional Sessions Judge. The order passed by the Magistrate directing registration of criminal case was set aside by the Additional Sessions Judge. The order passed by the Additional Sessions Judge was challenged by the appellant before the High Court. The challenge however did not succeed. The order of the High Court was then challenged by the appellant before the Supreme Court. During pendency of the matter before the Supreme Court, decision came to be delivered in the case of *T.T. Antony* (supra). While granting leave to appeal, the Division Bench of the Supreme Court doubted the correctness of the judgment in the case of *T.T. Antony* (supra) and referred the matter to a Larger Bench. After examining the decision rendered in the case of *T.T. Antony* (supra), the Supreme Court was of the view that the decision rendered by it in that case, did not preclude an aggrieved person from filing a counter case. The Court was of the view that in *T.T. Antony*, it had only held that any further complaint by the same complainant or others against the same accused, subsequent to a registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint and hence, will be prohibited under Section 162 of the Code. This prohibition, according to the Supreme Court, does not apply to counter complaint by the accused



in the first complaint or on his behalf alleging a different version of the said incident. Allowing the appeal, the Supreme Court, inter alia held as under:

“23. Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimated right to bring the real accused to books, This cannot be the purport of the Code. 24. We have already noticed that in the T.T. Antony's case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20th May, 1995, the appellant and the 1st respondent herein have lodged separate complaints giving different versions but while the complaint of respondent was registered by the concerned police, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back.”

35. It was submitted by the learned Counsel for the petitioner that in fact the complaint is actuated by ulterior motives since the strategy behind seeking directions for investigation by the police is to stall the trial of the murder case pending against him on the ground that his complaint giving counter version of the incident being under investigation pursuant to a judicial order, the trial should be stayed or held up till the investigation into the counter version given by him is complete and culminates in filing of a charge-sheet or final report, as the case may be. The argument of the complainant justifying such a relief would be that he will face a fait basis of investigation being conducted by it, comes to the conclusion that he was innocent and the other party was the real culprit. Considering the circumstances that (i) there is no allegation of the complainant Mohd. Rafique or anyone acting on his behalf having made any complaint to the Station House Officer, giving counter version of the incident which took place on 22nd

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December, 2005; (ii) there is no allegation of the complainant or anyone acting on his behalf having written to the Deputy Commissioner of Police under Section 154(3) of the Code of Criminal Procedure; (iii) there is no allegation of the complainant having given his version of the incident to the Magistrate before whom he was produced from time to time for the purpose of taking his remand; (iv) the complainant has not annexed copy of any complaint made to the Station House Officer or to a superior police officer either by him or anyone acting on his behalf; (v) the complainant did not approach the Magistrate at any time before filing of charge-sheet and against him and taking of cognizance by the Court, it appears to me that the complaint filed by Mohd. Rafique is indeed tainted with ulterior motives, the purpose being is to stall the progress of the trial pending against him which is stated to be substantially complete. If the Court directs registration of FIR and consequent investigation at this stage, it will only be lending a helping hand to a person who does not seem to be a bona fide person aggrieved on account of refusal of the police to register FIR on the complaint made by him and whose sole motive appears to be to frustrate or at least delay the trial pending against him. Such an investigation, if directed at this stage, is bound prejudice the prosecution and result in circumventing the legal process.

39. I am, therefore, satisfied that the impugned order, if allowed to stand, will result in gross abuse of the process of the Court, at the behest of a person accused of committing a serious offence. If such an order is not quashed, it will give a convenient tool to the persons facing trial for committing heinous crimes, pursuant to investigation carried out by the State machinery, to thwart the legal process, by filing a complaint at a time which suits their strategy, giving a counter version claiming themselves to be innocent and implicating persons, who are likely to depose against them, so as to put pressure on those witnesses not to depose against them. In fact sheer pressure of being accused of having committed a serious offence, by itself may dissuade the witnesses from coming forward to give evidence against the accused and if that happens, the accused will become successful in his sinister design of frustrating the legal process initiated against him. Such attempts, therefore, need to be nipped in the bud and such abuse of legal process needs to be curbed by an effective and decisive intervention by this Court, which owes a duty to uphold the legal process and prevent its abuse or misuse by anyone, whosoever he may be.”

8.1 This decision is not applicable to the facts of the case in hand. There

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is no revival of the application under Section 156(3) Cr.P.C., which was dismissed by Ld. M.M. There is no stay of trial of the criminal case filed by State against the respondent No. 2. Already, many witnesses have been examined. There was no occasion for the respondent No. 2 to go to police immediately after the incident as he was neither present at the time of the unfortunate incident nor he was aware of the surrounding circumstances of death of his daughter-in-law till he got copy of the charge-sheet. So, the ratio of judgment in **Mohd. Salim Vs. State** (*Supra*) is not applicable to the present case.

9. Petitioners have also placed reliance on the judgment titled as ***Kashinath Kutwal and others v. The State of Maharashtra and Anr.*** reported as **2017 SCC Online Bom 462**, especially on para Nos. 1, 8 and 23, which are reproduced hereunder:-

“1. The following question arises in this application under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”):
“Whether in the facts of the case after completion of investigation of a crime and after filing a charge sheet, under an order of the learned Judicial Magistrate First Class under Sub-Section (3) of Section 156 of Cr.P.C passed on the basis of a complaint filed by an accused, one more First Information Report can be registered in relation to the same incident.”

8. Thus, the factual scenario which emerges is that on the basis of the FIR lodged on 29 November, 2015 by the husband of the deceased, investigation has been carried out and charge sheet has been submitted. The case was committed to the Court of Sessions on 18 March, 2016. The second respondent who was shown as an accused, applied for discharge and his application was rejected on 1 October, 2016 by a detailed order. It was held by the Sessions Court that prima facie, there is sufficient material against the second respondent to proceed. The said order has attained finality. After the said Order was passed, on 26 October 2016, without disclosing the said Order, the aforesaid Complaint was filed on the basis of the same incident. On the basis of the impugned order dated 25 November, 2016 passed under Sub-Section (3) of section 156 of Cr.P.C, the impugned FIR has been registered on 19



November, 2016 alleging commission of an offence punishable under Section 302 read with Section 34 of the Penal Code, 1860 against the husband of the deceased, the present applicants and five others. According to us, the action of filing the complaint under Sub-Section (3) of Section 156 of Cr.P.C. by the second respondent after filing an application for discharge and after the said application was rejected on merits, is nothing but an abuse of process of law. Whether the registration of second FIR can be made is another issue. Even without going into the said issue, the applicants must succeed.

23. Subject to what is observed above, the application must succeed and we pass the following order:-

ORDER

(i) The order dated 15 November, 2016 passed by the learned Judicial Magistrate, First Class, 3 Court, Baramati is set aside and RCC No. 645 of 2014 stands dismissed;

(ii) Consequentially, the First Information Report bearing C.R. No. 375 of 2016 registered with Wadgaon Nimbalkar Police Station on 19 November, 2016 is quashed and set aside;

(iii) We make it clear that we have made no adjudication on the merits of the pending case and merits of the allegations made by the second respondent as regards commission of the offence punishable under Section 302 read with Section 34 of the Penal Code, 1860;

(iv) Rule is made absolute on above terms with no order as to costs.”

9.1 With due respect, again ratio of this judgment is not applicable to the facts of the present case as there is no application under Section 156(3) Cr.P.C. surviving and there is no concealment of facts. Rather, the entire complaint of the respondent No. 2 is based upon the facts and circumstances disclosed in the charge-sheet filed by the State.

10. Reliance is also placed on *Vanitabai & Ors. v. State of Maharashtra & Anr.* reported as **III (2017) DMC 642 (DB) (Bom.)**, especially on para 16, which is reproduced hereunder:-

16. We find that when the learned Magistrate has taken cognizance of the allegations of respondent No. 2 in complaint R.C.C. No. 366/2016 against accused Nos. 1 to 6 and has



discharged accused No. 7, they cannot be again compelled to face ordeal of trial on the same facts. It amounts to abuse of the process of the Court. Hence, we hold that F.I.R. is not maintainable and pass the following order:

ORDER

(i) Criminal Application is allowed. The F.I.R. registered against the applicants at C.R. No. 38 of 2017 at Begumpura Police Station, Aurangabad now transferred to Vaijapur for offence punishable under Section 498-A, 323, 504, 506 read with Section 34 of Indian Penal code, is hereby quashed.

(ii) We clarify that the observation made herein are made only for deciding the present application filed by the present applicants and these observations shall not be used elsewhere in any other trial against the present applicants or anybody else.”

10.1 In the above case, same accused were again facing another trial on the same facts. It is not the case of the respondent No. 2 here. As on date, there is no case registered against the present petitioners and only a complaint is pending before Ld. M.M., hence ratio of this judgment is not applicable.

11. It is also submitted that testimony in another case is not to be relied upon as was held in the case of *Shadab Siddique @ Aman Vs. State of West Bengal & Anr.* reported as **2017 SCC Online Cal 102**. Relevant is para No. 9, which is reproduced hereunder:-

“9. Finally, the learned Counsel for the petitioner sought for production of the documents like seizure list and/or deposition recorded in the course of trial in the aforesaid case relating to possession of fire arms where the petitioner had been convicted. It is settled law that evidence of one case cannot be used in another case until and unless the witness has been confronted with his deposition in the other case. No such effort has been made by the defence in the course of trial of the instant case. Hence, I am constrained also to disallow the prayer of the petitioner to produce/rely on the documents exhibited and/or evidence adduced in the aforesaid case under the provisions of the Arms Act.”

11.1 With due respect, again ratio of this judgment has not application to the present case as there is no order of the Ld. M.M. on merits of the



complaint. Witnesses are yet to be recorded as ordered by Ld. ASJ and the outcome of consideration of merits of evidence to be led by complainant cannot be discussed at this stage.

11.2 It is also submitted that respondent No. 2 never requested to examine any further witnesses and the Court on its own cannot grant the said opportunity. The complainant's case cannot be treated as a cross-case. In my view, in the interest of justice, Ld. ASJ has the power to order examination of any further witness(s), if the complainant wishes, so as to uncover the truth and to set the controversy to finally rest and with a view to give a broader view to the Ld. Magistrate to decide the complaint on merits.

12. On the other hand, respondent No. 2 has relied upon the *State of M.P. v. Mishrilal (Dead) and Ors.* reported as (2003) 9 SCC 426. In para 7 and 8 of this judgment, it is mentioned that when there were two versions of the same incident and a complaint has been filed on the basis of the version as propounded by the complainant, duly supported by forensic evidence, so the case is to be decided on its own merit. Hence, the learned ASJ was right in giving a chance to the complainant/respondent No. 2 to lead further evidence to prove the contents of the complaint at pre-summoning stage.

13. It is also the submission of the respondent No. 2 that the petitioners have moved this Court at a premature stage as there is no finding against them, which may prejudice the present petitioners. Rather the learned ASJ, vide impugned judgment, has only remanded the matter back with a fixed time frame and has given opportunity to complainant/respondent No. 2 to examine further witnesses, if required, and if after crossing the said stage, the learned MM passes any adverse order against the interest of the petitioners, they have every right to challenge the same. This Court agrees

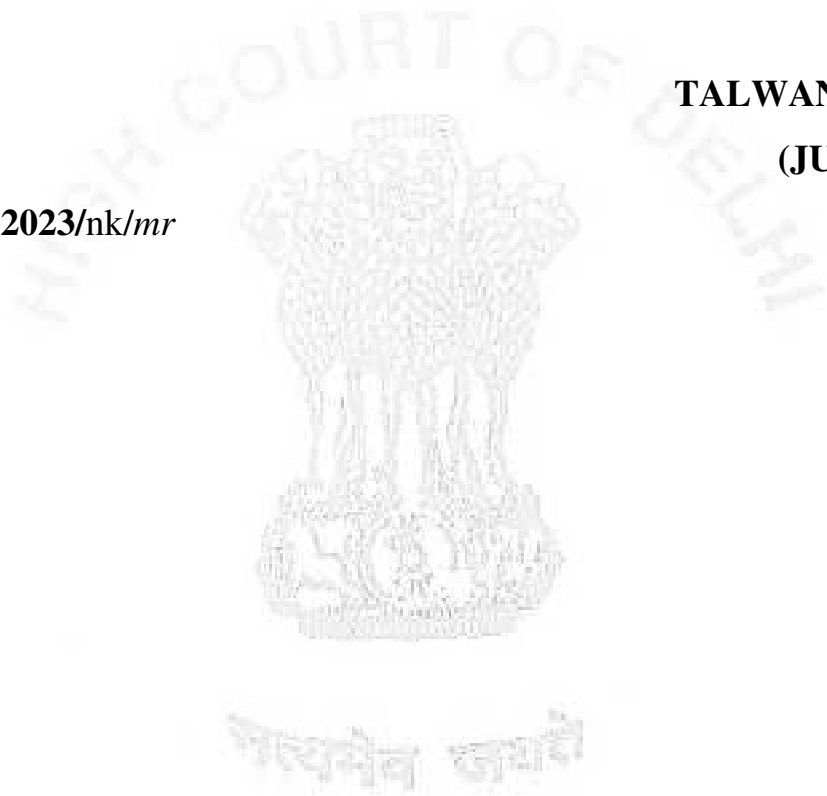


with this submission. Recording of pre-summoning evidence is essentially at the instance of the complainant and proposed accused persons cannot object to the same. As and when, if at all, they are summoned, at that stage the present petitioners will have a right to challenge their summoning.

14. The revision petition is without any merit and the same is hereby dismissed.

**TALWANT SINGH
(JUDGE)**

MAY 29, 2023/nk/mr



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