

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Cr. M. P. No. 216 of 2016

Smt. Chandra Narayan Das **Versus** Smt. Chand Devi Daga & Ors.

<p>02.02.2017</p>	<p>Shri Harsh Wardhan, counsel for the petitioner.</p> <p>Shri B. D. Guru and Shri Atanu Ghosh, counsel for the respective respondents.</p> <p>Heard on I.A. No.01/16 for bringing legal representatives of the petitioner on record.</p> <p>The present petition has been preferred under Section 482 CrPC assailing the order dated 20.11.2015 passed by the 8th Additional Sessions Judge, Durg whereby the revision filed by the petitioner against the order of the JMFC, Durg dated 26.02.2015 rejecting the complaint of the petitioner was rejected.</p> <p>Pending the present petition, the petitioner/complainant expired on 02.04.2016, a copy of the death certificate is also enclosed with this application.</p> <p>Counsel for the petitioner submits that the legal heirs of the petitioner-complainant are still interested in pursuing the complaint and thus, they seek permission of this Court for substitution of the petitioner who has since expired.</p> <p>Counsel appearing for the respondents opposed the application on the ground that the legal heirs of the complainant do not have any locus in the factual matrix of the case. If at all if they have any grievance, they may file a fresh complaint in stead of stepping into the shoes of the present complainant. According to the respondents, once when the complainant dies, the grievance also stands decided and if at all if there is any grievance left for the legal heirs, the only remedy is to file a fresh complaint altogether. Counsel for the respondents opposed the</p>	

application on the ground that it is legally not permissible and the judgments referred to by the counsel for the petitioner in support of the application for substitution would not be applicable in the instant case for the reason that in those cases, the application was moved subsequent to the cognizance was taken by the Magistrate whereas in the instant case, the complaint itself got dismissed before the trial Court and the Revisional Court has also upheld the order of the trial Court, therefore, the principles laid down by the said judgments would not be applicable in the factual matrix of the present case.

Having considered the rival contentions put forth by the parties, it would be relevant at this juncture to refer to the recent decision of the Allahabad High Court in the case of **Habib Vs. State of U.P. and Others** reported in **2013 CRI.L.J. 4897** wherein after referring to various decisions of the Supreme Court, the Allahabad High Court in para-23 has held as under:

“23. From perusal of the aforesaid judgments of the Apex Court, it is now well settled that on the death of the complainant, under Section 256 (2), Cr.P.C. cannot ipso-facto bring about the termination of the criminal proceeding and in that case the learned Magistrate is authorized to exercise his power under Section 302, Cr.P.C. by allowing any person or prosecution agency for conducting of the criminal case merely on the death of the complainant, the complaint filed by him cannot be dismissed nor the accused acquitted or discharged under Section 256 or 258 CrPC.”

It is also relevant to refer to the decision of the Supreme Court in the case of **Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (deceased by L.Rs.)** reported in **AIR 2005 SC 48** wherein also the Supreme Court referring to its earlier decisions in para-10 has held as under:

“10. In the present case, neither heirs of the complainant filed petition under Section 302 of the Code to continue the prosecution nor any permission was sought by them from the competent Court that they should be allowed to continue the prosecution through their power of

attorney holders, rather the prayer was made by the power of attorney holders, which is not permissible under law. This being the position, we are of the view that the trial Court was not justified in allowing the petitions under Section 302 of the Code and the High Court has committed an error in confirming the said order which is liable to be set aside and the petitions under Section 302 of the Code are fit to be dismissed giving liberty to the heirs either to make application themselves before the Court concerned to continue the prosecution or apply to the Court to grant permission to them to authorize the power of attorney holders to continue the prosecution on their behalf.”

In view of the two aforesaid authoritative decisions of the Supreme Court as well as the Allahabad High Court, the application for bringing legal representatives of the petitioner-complainant on record deserves to be allowed. The reason for allowing the said application is also strengthened from the fact that the present petition was though filed at the behest of the complainant Smt. Chandra Narayan Das but it was being contested through the power of attorney holder Shri Hemant Bhambhwani who happens to be the son of the petitioner and it is he who along with the other siblings have sought permission of this Court for substitution of the petitioner.

Accordingly, I.A. No.01 is allowed. Let necessary amendment be carried out within a period of seven days from today and the matter be listed for further consideration thereafter.

Sd/-

P. Sam Koshy
Judge