

HIGH COURT OF MADHYA PRADESH : JABALPUR

// MEMO//

No. 013411 /
III-2-9/40 Pt-I F.N. 5-A

Jabalpur, dt. 27 /08/17

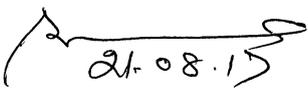
To,

The District & Sessions Judge
.....(all in the State)

Subject:- Circulation of the court order dated 01-08-2017 passed in Criminal Revision no. 1638/2016 "Birendra & another Vs. State of M.P."

As directed, on the subject mentioned above, please find enclosed the copy of court order passed by Hon'ble Shri Justice Sushil Kumar Palo, Judge, High Court of M.P. Jabalpur in Criminal Revision no. 1638/2016 "Birendra & another Vs. State of M.P." dated 01-08-2017 ,with a request to circulate the same to all the CJMs & Magistrates under your kind control to sensitize them to record the statement of the complainant so far as practicable on the same day when the complaint is filed.

Encl: As above.


(SANAT KUMAR KASHYAP)
REGISTRAR(DE)

APR
01.08.17

High Court of Madhya Pradesh At Jabalpur

Criminal Revision No. 1638/2016

Birendra & Another.....Petitioners

Vs.

State of M.P.....Respondent

Shri Umesh Pandey, learned counsel for the petitioners.

Shri Dilip Shrivastava, learned P.L for the respondent/State.

Present: Hon'ble Shri Justice Sushil Kumar Palo

Order

(01 .08.2017)

Heard on I.A. No. 17527/2016, an application under Section 5 of the Limitation Act for condonation of delay. The petition is delayed by 34 days.

2 On behalf of the petitioners it is submitted that earlier the petition was filed under Section 482 Cr.P.C. Subsequently, on 29.06.2016 by order the Court converted to petition under Section 397 read with Section 401 of the I.P.C. Therefore, the revision is delayed by 44 days.

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3 Considering the delay as bona fide, I.A. No.

17527/2016 is allowed. Delay of 34 days is condoned.

4 The complainant- Smt. Reena Gupta has not been impleaded as a party in this case as she is no more.

5 Brief facts just necessary for disposal of this revision are that complainant- Smt. Reena Gupta filed a criminal complaint case before learned J.M.F.C, Damoh for offence under Sections 498 A, 323, 294, 506-B read with Section 34 of I.P.C on 06.09.2010. The complainant was present in person. It was listed for recording of the statement under Section 200 read with Section 202 of Cr.P.C. Subsequently, on 04.10.10, 02.11.10, 30.11.10 and 09.12.2010, the complainant- Smt. Reena Gupta was present in the Court but her statement under Section 200 could not be recorded.

6 On 11.06.2013, on behalf of the complainant, her brother filed an application stating that the complainant died on 14.03.2013 with the copy of her death certificate. Subsequently, his brother Vivek Gupta prayed that he wants to further prosecute the case in place of the deceased complaint.

7 This application was decided on 17.06.2013 by J.M.F.C, Damoh and the same was dismissed. However, J.M.F.C, Damoh marked the attendance of the complainant- Smt. Reena Gupta continuously till 20.02.2015.

8 The accused persons preferred this present revision under Section 397 read with Section 401 of the Cr.P.C, to set aside the order dated 10.11.2014, passed by the J.M.F.C, Damoh wherein cognizance has been taken under Sections 498-A and 498-A read with Section 34 of I.P.C on the basis of the statements made by Vivek Gupta, Abhishek Gupta and Anita Kesharwani.

9 The main contention of the petitioner is that in absence of the statement of the complainant under Section 200 of Cr.P.C, no cognizance can be taken. Therefore, in absence of the statement of Smt. Reena Gupta, the order dated 10.11.2014, taking cognizance of offence is vitiated.

10 He placed reliance on the case of **Nirmaljit Singh Hoon Vs. The State of West Bengal, AIR 1972 SC 2639,**

wherein it is specifically observed that:- "without the verification of the complainant, the complaint filed by her and the examination of the complainant on oath, no cognizance could be taken."

11 Complaint was filed by Smt. Reena Gupta. She alleged that Rs.5,50,000/- was spent during her marriage. Subsequently, after marriage, she was subjected to cruelty for demand of dowry and further demand of Rs.2,00,000/- was placed. When the same was not fulfilled, she was subjected to harassment mentally and physically. Whenever she visited her matrimonial home, narrated the harassment to her mother and brother. They consoled her saying that in the course of time, everything will be all right. Subsequently, when she came to her maternal home and lived there, her husband Birendra did not come to take her to the matrimonial home. On 19.05.2010, the accused persons came to Damoh. Her mother discussed with the accused persons about not taking the complainant to the matrimonial home. They again demanded Rs.2 lacs and stated that if the demand was not met, the complainant- Smt. Reena Gupta will not be taken to her marital house. They abused her

and said that they will kill her and will inform that she has committed suicide. Hearing the commotion neighbour people came to the house. The accused persons also threatened that if the demanded amount is not met, her husband- Beerendra would go for a second marriage.

12 The statements of Vivek Gupta, Abhishek Gupta and Anita Kesharwani under Section 202 was recorded on 25.06.2013, 22.07.2013 and 15.01.2014.

13 No doubt the recording of verification of the complainant is not a mere formality. The Magistrate has to ascertain whether the complainant is genuine or frivolous. The object of verification is to discourage frivolous proceedings. But where verification is not recorded by the Court itself and for the omission to record the verification of the complaint, the complainant cannot be penalized.

14 In the present case, it is observed that on 06.09.2010, the criminal complaint was filed. The complainant Smt. Reena Gupta attended the Court on 06.09.2010, 04.10.2010,

02.11.2010, 30.11.2010 and 09.12.2010. Subsequently, on different dates, the Presiding Officer was on leave and the dates were given for recording her statement under Section 200 Cr.P.C. On 11.06.2013, application for substitution was filed by Vivek Gupta stating that deceased died on 14.03.2013. It is travesty of justice that the complainant's statement could not be recorded despite her being attended the Court for five different dates. It has added insult to the injury.

15 In a warrant trial where the offence is non-cognizable, but non-compoundable, on the death of the complainant the Magistrate cannot dismiss the complaint and discharge the accused for absence of the complainant. Therefore, when the complainant is dead and on her behalf the statement was made by Vivek Gupta, the purpose of verification of the complaint has been fulfilled as required under Section 200 of Cr.P.C. Though the examination of the complainant is necessary. But in the present circumstances, when the complainant was repeatedly present before the Court for recording her statement and the Court adjourned the matter repeatedly and did not examine the complainant, it is not the fault of the complainant-

Smt. Reena Gupta. Where the allegations in the complaint clearly make out the offence, the non-examination of the complainant would not vitiate the cognizance. The defect is curable under Section 464 of the Cr.P.C as has been held in the case of **“Dipak Ghosh Dastidar Vs. Sant Kumar Mukherjee & State, 2003 (1) Crimes 297 (302) (Cal); Adimul Hossain Khan Vs. Sate of Orissa, 2008 Cr.L.J 655 (656).**

16 In the present case, the complainant Smt. Reena Gupta died before recording her statement under Section 200 of Cr.P.C. Therefore, her brother has come forward to prosecute the case. Hence, the statements of the witnesses under Section 202 Cr.P.C have been considered in the order impugned. The complainant is dead. Hence, such a course may be irregular but does not vitiate the entire proceeding. In this regard reference can be made in the case of **“Triloki Nath, AIR 1962 Raj 94; and Mallappa Sangappa Vs. Laxmanappa Besappa, 1995 Cr.L.J 715 (716) (Kant).”** The non-examination or improper examination of the complainant cannot be made a ground to set aside the order of Magistrate issuing process at the instance of the accused persons. In this regard reference can be made to

“Durvasa Vs. Chandrakala, 1994 Cr.L.J 3765 (3769) (Kant).”

17 Similarly, the non-compliance with the conditions relating to recording of statement and substance of examination does not vitiate the proceedings as has been held in the case of **Sourindra Lal Vs. Latika Das, 1977 Cr.L.J 405 (Cal-DB).**

18 For the reasons mentioned above this revision sans merit and is, therefore, dismissed.

19 Before parting with the case, it would be appropriate to sensitized the C.J.M and the Magistrates working in the State to record the statement of the complainant so far as practicable on the same day when the complaint is filed.

20 The Registrar General is requested to place this order before the Hon'ble Chief Justice and after his Lordship's approval may circulate the copy of the order to all C.J.M and Magistrates posted in the State.


(Sushil Kumar Palo)
JUDGE