



RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 316/2020

1. Bishan Lal Jangid S/o Khemchand Sharma, R/o Flat No.B-5/207, Kanchanjanga Apartment, Opp. Khatipura Railway Station, Jaipur, Raj.
2. Prahlad Gupta S/o Late Shri Babulal Gupta, President/Founder of Shri Shankar Seva Dham Sansthan, Address Behind 52 Feet Hanuman, Agra Road, Jaipur.

----Petitioners

Versus

1. State of Rajasthan, through PP
2. Bhagchand S/o Kajod Mal, R/o Village Post Kalwar, Raigaro Ka Mohalla, Tehsil & District Jaipur, Raj.

----Respondents

For Petitioner(s) : Mr.R.K. Agarwal, Sr. Adv. assisted by
Mr.Pankaj Gupta

For Respondent(s) : Mr.Jitendra Singh Rathore, PP
Mr.Neeraj Sharma

JUSTICE ANOOP KUMAR DHAND

Order

19/03/2026

Reportable

1. By way of filing the instant criminal misc. petition, a challenge has been made to the order dated 05.10.2018 passed by the Additional Civil Judge & Metropolitan Magistrate No.24, Bassi, Jaipur Metropolitan by which cognizance has been taken against the petitioners for the offences under Sections 201, 308 & 120-B IPC.
2. Learned counsel for the petitioners submits that the petitioner No.2 is founder member of Shri Shankar Seva Dham Sansthan, a Society registered under the Rajasthan Societies



Registration Act, 1959 and the same is run by a committee of which the petitioner No.2 is the President. The Society provides shelter homes to the mentally retarded, handicapped and destitute persons. The said Society not only provides shelter to the inmates but also provides all types of facilities including food, cloths, medicines, treatments to these persons etc. The Society as well as the petitioner No.2 is fully dedicated and devoted towards the cause of "Sansthan" and welfare of the individuals residing therein. Counsel further submits that the Society also has a cremation ground attached to it for the purpose of cremation of any persons, if they pass away while residing at the aforesaid shelter home of the Society. Counsel further submits that several renowned persons are Patrons and Trustees of the Society and they have devoted their names and invaluable time towards the upliftment of the destitute persons residing with the Society. Counsel submits that on 12.06.2017, the petitioner No.1, being a Driver, while providing his voluntary service to the Society, found one Sitaram aged around 60 years in a very depleted and critical condition on road. Under such circumstances, the petitioner No.1 took Sitaram in the ambulance and admitted him in the Society, where he was treated. However, on account of severe weakness, Sitaram could not survive and passed away due to cardiopulmonary failure. Counsel submits that the treating Doctor P.S. Kochar has also issued a certificate in this regard. Counsel submits that thereafter, funeral of the dead body of the said Sitaram took place at the Adarsh Nagar Mokshdham, Jaipur free of cost. Counsel further submits that after a period of around two months from the date of funeral, the complainant-respondent,





who claims himself to be the brother of the deceased-Sitaram filed a complaint against the petitioners levelloing allegation that his brother Sitaram was in a healthy and sound condition before he passed away and there is a possibility that the petitioners might have taken out his organs and sold the same illegally, without providing any information of Sitaram's death to his brother, i.e., the complainant-respondent.

3. Counsel submits that prior to lodging of the aforesaid complaint on 08.08.2017, the complainant-respondent visited the Society on 17.07.2017, enquiring about the whereabouts of his brother-Sitaram and thereafter, he came to know about death of the deceased-Sitaram due to cardiopulmonary failure. Counsel submits that at the time of admission of Sitaram to the Society, a sum of Rs.1,986/- was found with him and the same was retained by the Society and was thereafter handed over to the complainant. The complainant himself on his own will donated the aforesaid amount to the Society, for which a donation receipt was also issued to the complainant on 17.07.2017 by the Society. Counsel submits that the aforesaid complaint submitted by the complainant-respondent with the Police Commissioner, East, Jaipur Metropolitan was enquired by the Police Station Kalwar, Jaipur and after thorough enquiry upon the aforesaid complaint, a conclusion report was submitted by the Sub-Inspector, Police Station Kalwar, Jaipur on 11.08.2017 stating therein that no such alleged incident has occurred and the complainant was aware about the admission of his brother Sitaram in the Society and after his death, the complainant-respondent himself has deposited the amount of





Rs.1,986/- with the Society by way of donation. Hence, the allegations levelled by the complainant were found to be baseless.

4. Counsel submits that in spite of the above, again the complainant filed a second complaint with regard to the same allegations before the Court of Metropolitan Magistrate No.24 and a reference of the earlier complaint was also given in the second complaint. Thereafter, statements of the complainant were recorded under Section 200 Cr.P.C. and on the basis of the averments in the complaint and the allegations levelled in the statement under Section 200 Cr.P.C., cognizance has been taken against the petitioners for the offence under Section 201, 308 & 120-B IPC. Counsel submits that in view of the submissions made hereinabove, no offence is made out, hence, interference of this Court is warranted.

5. *Per contra*, learned counsel appearing on behalf of the complainant as well the Public Prosecutor opposed the prayer made by counsel for the petitioners and submitted that upon finding a prima facie case against the petitioners, cognizance has been rightly taken against them by the triable Court, by way of passing the impugned order. Hence, interference of this Court is not warranted and the instant petition is liable to be rejected.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. Perusal of the record as well as the allegations levelled in the complaint by the complainant-respondent, particularly, in Para No.5, indicate that his brother Sitaram was hale and hearty and that his death occurred on account of unnatural causes and that





there is a possibility that the petitioners might have taken out organs from his body and sold the same illegally.

8. Precisely, on account of the aforesaid allegations, cognizance has been taken against the petitioners under Section 201, 308 & 120-B IPC. For ready reference, Sections 201, 308 & 120-B IPC are reproduced as under:-

“201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with 1 [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to





ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

308. Attempt to commit culpable homicide.—Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous





imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]”

9. The main offence for which cognizance has been taken against the petitioners is the offence under Section 308 IPC. Section 308 IPC states that whosoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide, not amounting to murder. It is worthy to note here that Section 308 IPC applies to the acts committed against a living person with the intention or knowledge that such acts would cause death of the person. If any act is committed on a dead body, the same cannot constitute the offence of ‘culpable homicide’ because the victim has already passed away, therefore, the essential requirement of causing or attempting to cause death of a living human being is missing. It is quite surprising that cognizance has been taken against the petitioners with the allegation that after the death of the deceased-Sitaram, an attempt was made to cause his death by way of removing organs from his body. This Court is unable to accept the finding of the Trial Court as to how an





attempt can be made to cause death of a person, who is already dead.

10. In the case of **M/s Pepsi Food Limited & Anr. Vs. Special Judicial Magistrate** reported in **1998 (5) SCC 749**, the Hon'ble Apex Court has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence, both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of taking cognizance.

Herein the instant case, it is the admitted case of the complainant that his brother-Sitaram was hale and hearty, and died naturally and it appears that after his death, the accused persons have removed organs from his body to sell the same illegally. Only on the basis of the aforesaid allegation, cognizance has been taken against the petitioner under Section 308 IPC. Section 308 IPC and deals with the attempt to commit culpable homicide. This offence can only be committed against a living person. It is astonishing to believe that how an attempt to commit the offence of culpable homicide can be possible upon a person, who has already died. Attempting to kill a person, who is already dead is considered to be an 'impossible attempt'. Because the desired outcome of an attempt, i.e., attempt to cause death upon





a dead person, is legally and physically impossible. Hence, no case is made out to take cognizance against the petitioners.

The Society run by the petitioner No.2 is doing a pious work of providing shelter to the destitute persons, who are found helpless and in a weak position on the roads. These persons are taken to the shelter home of the Society run by the petitioner No.2, where treatment and various facilities including food, clothes, etc. are provided to such persons. The persons like petitioner No.1, who take such persons to the shelter home to save their lives. If such vague and vexatious allegations are levelled by the complainant and the same are relied upon, then no one would make any efforts to save the humanity and human beings. The morale of such pious Society working in the shelter home with pious object, would go down and the destitute persons would never get any help and shelter in order to save their lives.

11. Removing the organs is illegal under Section 4 of the Transplantation of Human Organs and Tissues Act, 1994 (for short, "the THOT Act, 1994"). Section 18 of this Act stipulates that removal of any human organs or tissues without authority, is a punishable offence with imprisonment of upto 10 years.

12. The THOT Act, 1994 regulates removal, storage and transplantation of human organs and tissues for therapeutic purpose for preventing commercial dealing in human organs and tissues as well as matters connected therewith or incidental thereto. The THOT Act, 1994 guarantees a deceased person the right to protect and preserve the human organs and tissues or both of the dead body from being harvested without his/her consent or the consent of near relatives.





13. For application of the aforesaid provisions, a complete mechanism has been provided under the THOT Act, 1994 which mandates that the appropriate Authority, as constituted under Section 13 of the THOT Act, 1994, is supposed to file a complaint against the accused person before the Metropolitan Magistrate or Judicial Magistrate of First Class. However, in the instant case, no such procedure has been adopted, rather the complainant has not approached any Authority levelling such allegation of removal of organs or tissues without authority against the petitioners. Further, no prima facie evidence is available on the record to show that the petitioners have removed organs from the body of the deceased-Sitaram. The allegations levelled by the complainant-respondent are hypothetical and based on his imagination. In this background, the conduct of the complainant is also required to be seen. The complainant being brother of the deceased-Sitaram was not bothered to trace out the whereabouts of the deceased-Sitaram and even after he went missing, no attempt was made by the complainant to trace him, by way of filing a Missing Person Report.

14. Had it been a case that at the time of conducting post-mortem of the deceased or at the time of preparing his inquest report, certain organs were found missing from his body, then certainly this case would have fallen under Section 18 of THOT Act, 1994. But in the instant case, neither post-mortem report nor any inquest report of the deceased was prepared. There was no reason for production of these documents, as the death of the deceased was not unnatural, rather he died naturally due to cardiopulmonary failure. The Post-Mortem Report and Inquest





Report are essential and critical documents to establish the offence of unlawful organ removal from a dead body. These documents are primary evidence to prove that the organs were removed without authority or consent of the dead person or his relatives.

15. The petitioner No.1, in good faith and in service of humanity, found the victim Sitaram in a depleted as well as in a weak condition and in order to save his life, he took him and admitted to the shelter home of the Society, run by the petitioner No.2, where treatment was provided to Sitaram in an attempt to save his life, but on account of severe weakness, he could not survive and died due to cardiopulmonary failure. This fact has also been certified by the treating Doctor P.S. Kochar. After death of the deceased Sitaram, all rituals were performed by way of providing a decent funeral to his dead body and his last rites and funeral were conducted at Adarsh Nagar, Mokshdham, Jaipur, with honour and dignity, taking into consideration his religious beliefs. It is a well accepted legal position that the Right to Life, fair treatment and dignity derive from Article 21 of the Constitution of India, which extends not only to living persons but also to their dead bodies. The last rites of even unidentified dead bodies should be performed with honour and dignity, while taking their religion belief into consideration. Recognition of posthumous legal rights gives the dead significant moral standing within the Indian Legal System. Performing the last rites of the dead strives to honour a decedent's right and protect his rights. Herein the instant case, the last rites and rituals of Sitaram were performed on 15.06.2017 with honour and dignity considering his religion belief.





16. After the death of the deceased, the complainant-respondent woke up on 17.06.2017 and tried to trace out the whereabouts of the deceased and thereafter, he approached the Society Office, where the money, which was recovered from the person of the victim-Sitaram, i.e., a sum of Rs.1,986/- was handed over by the Officials of the Society to the complainant. However, the complainant on his own volition, donated the aforesaid amount to the Society on 17.07.2017 for which a receipt was also issued to him. Even in the audit accounts pertaining to the period commencing from 01.07.2017 till 31.07.2017, as maintained by the Society reflects the name of the complainant-Bhagchand at Serial No.58.

17. It appears that after passing of a considerable time, the complainant filed a complaint with the aforesaid allegations against the petitioners and Society in the Office of the Additional Commissioner, East Jaipur Metropolitan on 08.08.2017. The aforesaid complaint submitted by the complainant was thoroughly enquired and the allegations were found to be baseless by the Police. At this stage, the complainant kept mum and did not approach any competent Court of law, and thereafter a delay of around one month, he filed another complaint, i.e., the second complaint before the Court of Metropolitan Magistrate No.27, Bassi, Jaipur Metropolitan. In Para No.8 of the said second complaint, a reference of the aforesaid first complaint has been given, and the same has been overlooked by the learned Magistrate at the time of taking cognizance against the petitioners. Filing of the aforesaid second complaint amounts to a successive complaint with regard to the similar allegations which





were levelled against the petitioners in the earlier complaint before the Additional Commissioner of Police, which resulted in a Final Report 'Negative'. It is settled proposition of law that a second complaint or second F.I.R. cannot be lodged with regard to the same incident and the same offence, as this view has been taken by the Hon'ble Apex Court in the case of **T.T. Antony Vs. State of Kerala** reported in **2001 SCC 2637**. Hence, under these circumstances, the successive complaint with regard to the same allegations is not tenable.

18. Therefore, it is clear from the allegations levelled against the petitioners that attempt to commit the offence of culpable homicide against the dead person is not possible, hence, no case is made out to proceed against the petitioners for the offence under Section 308 IPC and when prima facie Section 308 IPC is not made out, then the rest of the offences under Sections 201 and 120-B IPC are also not made out.

19. Considering the overall facts and circumstances of the case, this Court finds no prima facie case against the petitioners for proceeding against them for the alleged offences. The impugned order passed by the Court below dated 05.10.2018 passed by the Additional Civil Judge & Metropolitan Magistrate No.24, Bassi, Jaipur Metropolitan is not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set-aside. The entire proceedings arising out of the successive complaint are also quashed and set-aside.

20. The instant criminal misc. petition accordingly stands allowed. Stay application and all pending application(s), if any, stands disposed of.





[CRLMP-316/2020]

21. The record summoned from the Trial Court be sent back forthwith.

(ANOOP KUMAR DHAND),J

Aayush Sharma /1

