

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 475 of 2015

Kamlesh Chandrakar, S/o. M.L. Chandrakar, aged about 55 years, R/o. Kelabadi, Durg, District Durg (C.G.)

----Applicant.

Versus

State of Chhattisgarh, Through: Special Police Establishment, Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. H.B. Agrawal, Sr. Advocate with Ms. Preeti Yadav, Advocate.
For Respondent/State	:	Mr. S.C. Khakharia, Dy.A.G. with Mr. Arvind Shukla, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

20/07/2015

1. Challenge in this revision is to the order dated 16.06.2015, passed by the Special Judge, Durg, under Prevention of Corruption Act, Durg in Special Case No.4/1996, whereby two applications moved under Section 311 of Cr.P.C. to recall prosecution witness as also application under Section 311 read with Section 217 of Cr.P.C. to call for the witness in defence, was dismissed.
2. One application under Section 311 Cr.P.C. was moved to cross-examine one G.R. Banjare, who was examined by the prosecution on the ground that certain documents, which were not included in the list of the documents by the prosecution they have been exhibited and for which variance exist with the earlier documents

placed. One another application under Section 311 and 217 of Cr.P.C. was filed, whereby two witnesses namely Vijay Bakshi and Subhash Singh, were requested to be called on the ground that they have supplied certain documents under Right to Information to the applicant, which are placed in the case file.

3. Learned counsel for the applicant therefore, submits that if certain documents have been exhibited, which are not the part of the prosecution document, the same can not be read in the evidence and necessarily it will require re-examination. Further more it is also stated that the document which have been placed under Right to Information and the part of the record unless and until exhibited, the same can not be taken cognizance during the trial, consequently right to defence of the applicant would be defeated. Therefore, the instant petition may be allowed.
4. Per contra, learned State counsel opposes the same and would submit that in the earlier occasion, similar modus operandi was adopted by the petitioner and application under Section 311 of Cr.P.C. was moved, which was decided by a reasoned order dated 09.01.2015. Therefore, reviving the same issue in the garb to protract the trial can not be allowed. It is further submitted that considering the pendency of the case, a direction has been issued by the High Court to decide the same within stipulated time and the case is in final hearing stage and therefore applications have been moved only to protract the trial and none else. It is contended that it require summarily dismissal. It is further submitted that the order challenged are interlocutory in nature, therefore, the revision would

be barred under Section 397(2) Cr.P.C.

5. I have heard the learned counsel for the parties and perused the documents.
6. The pertinent application moved under Section 311 of Cr.P.C. by the accused No.9, 13, 16 & 17 was examined. Perusal of the application would show that request has been made to expunge the statement made at para 74 to 83 of G.R. Banjare on the ground that the documents differs in numbers when the documents were marked and exhibited. In this context, the earlier order dated 09.01.2015 passed by the Court was also perused. Perusal of such order would show that in the similar circumstances, an application was moved on the ground that certain documents were exhibited, which do not form the part of the prosecution documents and since they have been exhibited and pages also differs, consequently, statement of para 74 to 83 of G.R. Banjare, the prosecution witness be expunged.
7. The Court while adjudicating the said application recorded that the case would be decided on its merits if the documents which are not being produced by the prosecution have been exhibited, the admissibility of the same will be considered at the time of the final adjudication. Therefore, by the present application same prayer which was made earlier was repeated. Perusal of document would show, the Court while deciding the present application has given a reference of the order dated 09.01.2015 and dismissed the same as it was repetition. I have also examined the facts and earlier

application and order. It is a repetition of earlier issue which stood already adjudicated by order dated 09.01.2015. No prejudice even otherwise is caused to the petitioners as the Court has not given any finding in respect of the same documents and has left the issue to be considered at the time of final hearing. Therefore, I also do not find any merits on such repeated applications and the prayer made. In a result, the same is liable to be rejected having no merit.

8. Now coming to the other part of the prayer, wherein two witnesses were sought for examination namely Vijay Bakshi and Subhash Singh on the ground that certain documents have been provided under Right to Information by the said witnesses. Perusal of the order would show that the Court has recorded in its order that Vijay Bakshi has already been examined. Therefore, again at request of one of the accused, he can not be re-examined as no necessity exists. Similarly, one Subhash Singh Thakur, who is sought to be recalled as defence witness, who gave the documents under Right to Information, the Court has recorded that the documents are public documents, and in order to prove the same, the witnesses are not required to be examined.
9. Considering the order in the opinion of this Court, no prima-facie illegality appears in the order. It is observed that the Court has neither exceeded its jurisdiction while adjudicating the said application nor failed to exercise its jurisdiction vested in it by law. Further more the said order being interlocutory in nature, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. as has been laid down by the Hon'ble Supreme

Court in case of ***Sethuraman Vs. Rajamanickam***, reported in ***(2009) 5 SCC 153***. Further more the case being under the Prevention of Corruption Act, no stay can be granted as has been prayed for by virtue of Section 19 (3) (c) of the Prevention of Corruption Act, 1988.

10. Consequently, the petition has no merits and it is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge