

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 534 of 2015

Dinesh Banjare S/o Shri Hirawan Banjare Aged About 27
years R/o Village Mouli Chowk Purani Basti, Police Station
City Kotwali, District Baloda Bazar Chhattisgarh.

---- **Petitioner**

Versus

State Of Chhattisgarh Through Police Station City Kotwali,
Baloda Bazar District Baloda Bazar Chhattisgarh.

---- **Respondent**

For Petitioner - Shri Rajkumar Jaiswal, Advocate.
For Respondent/State- Shri Arvind Shukla, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri
Order

08/07/2015

1. This is a petition under section 482 of Cr.P.C.. The short facts of the case are that the petitioner is being tried in a Sessions Trial No.9/15 i.e. State of Chhattisgarh Vs. Dinesh under section 363, 366-B and 376 of IPC. In the said trial, the prosecutrix was examined and discharged. Case was subsequently fixed for evidence of the defence wherein an application was filed under section 233 of the Cr.P.C. to recall the prosecutrix on the ground that prosecutrix after the evidence has met the accused in jail. The defence had examined the Assistant Jail Superintendent of Baloda Bazar whose statement was recorded and thereafter on the basis of statement made it was stated that prosecutrix has met the accused in jail. Application having been filed to call the prosecutrix under section 233 of the Cr.P.C. same was dismissed on the ground that prosecutrix was examined

and cross examined for two days and since she came to the court for two days as such it cannot be stated that defence has not been given full opportunity of hearing.

2. I have perused the document filed along with this petition. The document contains statement of Dinesh Chandra Dhruv who was Assistant Jail Superintendent of Baloda Bazar. He has deposed that from 3/03/2015 to 15/06/2015 and 20/06/2015. Prosecutrix has come to meet along with sister of the accused which was proved as Ex.D-3. Therefore, on that basis the defence sought for to file an application to summon the prosecutrix. Same was dismissed by the impugned order.

3. Having gone through the order, court though has given reference of 1989 JLJ 217 has laid down that deposition should be at one place but at the same time second part of its judgment wherein it was observed when an application under section 233 of the Cr.P.C. is filed the accused is entitled to apply for issue of process compelling attendance of witnesses and the Court is bound to issue such process unless for reasons are otherwise. If the Court finds the application to be vexatious or designed to delay or defeat the ends of justice it may dismiss the same.

4. Having regard to the facts in this case, considering the statement of Dinesh Chandra Dhruv who is Assistant Jail Superintendent wherein he states that prosecutrix had went to meet

the petitioner, therefore naturally it will have a nexus with the offence for which accused is being tried. Consequently, denial to summon witness will defeat object of section 233 of the Cr.P.C. Further it is also observed that accused should be given all the opportunity to prove his defence. Consequently, in the facts of the case since prosecutrix herself went to the jail and met the accused which is proved by the statement of jailer, in my opinion, learned court of Sessions Judge should have allowed the application and should have allowed for issuance of PF for attendance of the witness. In a result, order dated 24/06/2015 is set aside.

5. In a consequence the application moved by the accused under section 233 of Cr.P.C. is allowed and it is directed on payment of process fees the court below shall issue notice compelling attendance of the witness named in application under Section 233 of Cr.P.C. and thereafter shall examine the witness.

6. With such observation, petition stands allowed.

Sd/-
(Goutam Bhaduri)
JUDGE