

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 395 of 2014**

Gajendra Singh alias Gajju S/o Shri Mahavir Singh, aged about 31 years, R/o Ward No. 10, Post & PS Baradwar, Teh. - Sakti, Rev. and Civil Distt. Janjgir-Champa, C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh through Distt. Magistrate Janjgir-Champa, Rev. and Civil Distt. Janjgir-Champa, C.G.
2. Vijay S/o Badri Prasad, aged about 30 years, R/o Village Mukta Raja, Ward No. 13, Post & PS Baradwar, Teh. - Sakti, Rev. and Civil Distt. Janjgir-Champa, C.G.
3. Naresh S/o Rama Prasad Khandey, aged about 21 years, R/o Village Mukta Raja, Ward No. 13, Post & PA Baradwar, Teh. - Sakti, Rev. and Civil Distt. Janjgir-Champa, C.G.
4. Dilip S/o Rama Prasad Khandey, aged about 26 years, R/o Village Mukta Raja, Ward No. 13, Post & PS Baradwar, Teh. - Sakti, Rev. and Civil Distt. Janjgir-Champa, C.G.
5. Topu S/o Chattey Lal Khandey, aged about 19 years, R/o Village Mukta Raja, Ward No. 13, Post & PS Baradwar, Teh. - Sakti, Rev. and Civil Distt. Janjgir-Champa, C.G.

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate
For Respondent 1/State	:	Shri Neeraj Jain, G.A.
For Respondent 2 to 5	:	Shri Ishwar Jaiswal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25.07.2016**

The present petition has been preferred challenging the order dated 02.04.2014 passed by the 1st. Additional Sessions Judge, Sakti in an unregistered Criminal Revision of 2014 upholding the order dated 23.11.2013 passed by the JMFC, Sakti in Criminal Case No.562/2011 permitting the prosecution for withdrawal of the said prosecution case

against the respondents 2 to 5.

2. The relevant facts in brief are that the present petitioner who is the complainant before the trial Court had filed an FIR against the respondents 2 to 5 for the offence under Sections 294, 506(B) and 323/34 of IPC which was registered against them and the matter was put to trial in Criminal Case No.562/11. The Court below vide its order dated 04.11.2011 framed charges against the respondents 2 to 5 for the offence under Sections 294, 506(B) and 323/34 of IPC. In due course of time the complainant/petitioner was also examined on 22.09.2012.

3. Subsequently, the State i.e. the prosecution moved an application in the light of the letter issued by the Collector calling for withdrawal of the prosecution against the respondents 2 to 5 which was allowed by the Magistrate vide its order dated 23.11.2013 and the respondents were acquitted of the charges levelled against them.

4. The said order dated 23.11.2013 was put to challenge by the petitioners in an unregistered Criminal Revision of 2014. However, the revisional Court also vide impugned order dated 02.04.2014 rejected the revision petition leading to the filing of the instant Cr.M.P.

5. Counsel for the petitioner referring to Annexure P-6 dated 08.06.2012 which is a letter issued by the department of Home, Govt. of Chhattisgarh submits that though the Govt. had issued the said circular on 08.06.2012 directing the prosecution Agencies for withdrawal of the old stale pending matters of different categories as envisaged in the said circular. But present is a case which would not fall within the ambit of the categories specified in the said circular and therefore it was wrong on the part of the State Govt. to move an application for withdrawal of the case against the respondents 2 to 5. He refers to Clause 4 (ii) and 4 (iv) a of the said circular which clearly depicts that the offence for which the respondents 2 to 5 have been charged,

would be permitted to be withdrawn only where the date of incident was prior to 31.12.2009, whereas in the instant case the date of incident was 31.07.2011. Therefore, the present case could not have been withdrawn by the prosecution based upon that circular. He further submits that the said order is also contrary to the judgment of the Supreme Court reported in (2005) 2 SCC 377 wherein under the similar facts and circumstances of the case the Supreme Court has held that such cases should not be allowed to be withdrawn or settled.

6. Counsel appearing for the respondents opposing the petition submit that in the present case since there was inordinate delay in conclusion of the trial and the offences also being not very serious, the Court below was justified in closing the matter and allowing the application for withdrawal of the case. So far as the circular of the State Govt. dated 08.06.2012 is concerned, the State was not able to give any satisfactory explanation as to whether the case of the petitioner would fall within the category specified in the said circular or not.

7. Having considered the rival contentions put forth by the counsel appearing for the parties and on perusal of the record it clearly reflects that the present is not a case which could be said to be a matter pending for consideration before the trial Court for an inordinate long period, rather it is a case where the date of incident is July, 2011 and in November, 2011 itself charges were framed and thereafter, some of the prosecution witnesses including the petitioner had been examined by 22.09.2012. Therefore, it could not have been said to be a case inordinate long pending before the Court below which forced the State to withdraw the prosecution case. In the opinion of this Court, the order dated 23.11.2013 as well as the order dated 02.04.2014 are not proper, legal and justified in the light of the circular of the State Govt. dated 08.06.2012 as also the judgment of the Supreme Court

reported in (2005) 2 SCC 377 I (Rahul Agrawal v. Rakesh Jain and another).

8. Consequently, both the orders dated 02.04.2014 and 23.11.2013 are set aside and the matter is remitted back to the trial Court i.e. the JMFC, Sakti for further proceeding. It is made clear that the JMFC shall proceed further with the trial from the stage it stood on 23.12.2013. Keeping in view the fact that the matter is now about 5-6 years' old, the Court below is directed to conclude the trial as early as possible.

9. Accordingly, the Cr.M.P. stands allowed.

Sd/-

P. Sam Koshy

Judge