

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 168 of 2016

1. Abhijit Jain S/o Late Kamlesh Jain Aged About 35 Years R/o Kamlesh Netralaya, Choprapara, Ambikapur, P.S. & Post Ambikapur, Civil & Rev. District Surguja Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through Police Station, Ambikapur, P.S. & Post Ambikapur, Civil & Rev. District Surguja Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Priyanka Mehta, Advocate
For Respondent/State	:	Shri Lav Sharma, PL, on advance copy

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

08/02/2016

1. As the question of maintainability of the instant Cr.M.P. involves in the matter, the petition is heard finally at the motion stage itself.

2. As per facts in brief for adjudication of the present Cr.M.P. are that the applicant is an accused facing trial before the Judicial Magistrate First Class, Ambikapur, District Sarguja (CG) in Cr. Case No. 1156/2012 (State of Chhattisgarh Vs. Abhijit Jain) wherein the accused/applicant had filed 2 interim applications, (i) under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C. '); and (ii) under Section 91 of the Cr.P.C.). After hearing, the trial Court vide order dated 6.11.2015 dismissed both the applications. The applicant challenged the order passed by the trial Court only under Section 91 Cr.P.C. and not challenged the order passed by the trial Court under Section 311 Cr.P.C. By filing the application under Section 91 Cr.P.C., it is prayed that some enquiry report

conducted by Dr. Sanjay Gopal and the documents annexed, statements, etc. be directed to be called for. After hearing of the said interim application, the Court below appreciated the entire facts elaborately and held that for a very long time, the accused/applicant is avoiding the cross-examination and thereby he is prolonging the matter and also held that the said application is not appropriate at that stage. The defence may be given opportunity to defend at the appropriate time. Consequently, the Court below had dismissed the said application.

3. On behalf of the applicant it is submitted that to avoid complication and other delay in the trial and for the purposes of proving those documents, the Court below had not given opportunity and thereby committed illegality or impropriety hence, the order passed by the trial Court dated 6.11.2015 be set aside. He be given an opportunity by allowing his application for summoning the documents as mentioned in the prayer clause of the instant Cr.M.P.

4. On behalf of the applicant the grounds mentioned in the Cr.M.P. are elaborately supported and prayed that the impugned order may be set aside. The application filed may be allowed and relief as prayed for may be granted.

5. For the purposes of appreciation regarding the arguments and the grounds taken in the instant impugned order passed, application under Section 91 Cr.P.C. and other annexed documents are perused.

6. In brief while passing the order, Court below observed that it is the applicant who is making delay in the trial and an opportunity may be given to defend when the occasion of defence arises.

7. As a settled law, initially the prosecution has to adduce evidence to prove the allegations made in the charge-sheet against the accused/applicant and thereafter, when the accused enters for his defence he may

pray and call the defence witnesses under the authority of law available.

8. On due consideration, I do not see any reason to take a different view as the opportunity of the applicant is not closed and the said application and their contents if prayed when the accused/applicant enters for the defence may be considered. Consequently, there is no scope for interference. There is no illegality or impropriety committed by the Court below. The instant Cr.M.P. has no substance. It is dismissed at the motion stage itself.

Sd/

(Chandra Bhushan Bajpai)

Judge