

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 231 of 2016**

Rajbahadur S/o Roopsingh Jatkar, aged about 26 years, R/o Salonikala, out post Bhatgaon, police station Bilaigarh, Civil and Revenue, District Baloda Bazar, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh through Station House Officer, police of police station, Bilaigarh, District Baloda Bazar, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri T.K. Jha, Advocate.
For the Non-applicant/ State	:	Shri Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board**

15/03/2016

1. Heard.
2. Issue notice to the Respondent.
3. Shri Lav Sharma, Panel Lawyer accepts notice on behalf of the State/ Respondent.
4. It is submitted on behalf of the Applicant that the instant criminal revision may be heard finally at the motion stage itself as a very short point is involved.
5. On due consideration, as the parties are represented, the matter is heard finally at the motion stage itself.
6. Brief facts required for disposal of the instant criminal revision are that Special Criminal Case No. 106 of 2013 (State vs. Rajbahadur) is pending before the Special Judge, Electricity Act/ First Additional Sessions Judge, Baloda Bazar, Chhattisgarh. On 20.7.2015, during trial, the prosecution

witnesses Manohar Lal Sahu (PW4) and Jagram (PW5) were present. The accused/ Applicant was also present whose counsel was not available on that date and the trial Court recorded examination-in-chief and asked the accused/ Applicant for cross-examination as his counsel was not available. The accused/ Applicant informed that he did not want to ask any question. Thereafter, on 2.3.2016, on behalf of the accused/ Applicant, an application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed by the counsel for the Applicant wherein it is prayed that since the above two witnesses were examined on behalf of the prosecution, they may be permitted to cross-examine on behalf of the accused. The Court below held that the accused/ Applicant informed that he did not want to ask any question as also his counsel was not present on that date and the application under Section 311 of the Code was filed without showing any sufficient cause and accordingly dismissed the said application.

7. Against the said order, Learned counsel for the Applicant has filed the instant criminal revision and submitted that on 20.7.2015 the counsel for the Applicant was not present and therefore the accused/ Applicant was not in a position to cross-examine PW4 and PW5 and hence, he informed the Court that he did not want to ask any question. It is further submitted that to defend himself through his counsel and to get a reasonable opportunity to cross-examine the witnesses is a legal right of the accused and therefore the impugned order dated 2.3.2016 may be quashed and the Applicant may be given an opportunity to cross-examine those witnesses.

8. Heard counsel for the parties and perused the impugned order, the instant criminal revision and other documents annexed thereto.

9. Learned counsel for the Applicant duly supported the entire grounds taken in the instant criminal revision and submitted that the Applicant may be granted an opportunity to cross-examine the aforesaid prosecution witnesses through his counsel to defend himself as per provisions of law.

10. On the other hand, Learned State counsel opposed the arguments advanced and also the instant criminal revision.

11. On due consideration, as on 20.7.2015, the Court below has recorded examination-in-chief of PW4 and PW5 and the counsel for the accused/ Applicant was not present at that time and therefore the Applicant was not in a position to cross-examine those witnesses and the counsel for the Applicant was bona fide not present on that date of hearing, as per the settled law, due opportunity has to be given to the Applicant to defend himself by cross-examining the aforesaid prosecution witnesses through his counsel.

12. Looking to the entire facts, I am inclined to grant an opportunity to the Applicant. On due consideration, the impugned order dated 2.3.2016 is hereby quashed.

13. The Court below is directed to grant an opportunity to the Applicant to cross-examine the aforesaid witnesses through his counsel by fixing a date and also by directing those witnesses through process of law to appear before the Court below for the cross-examination on behalf of the Applicant. It is further observed that the expenses of both the witnesses for their appearance before the Court below for the purpose of their cross-examination shall be borne by the Applicant as per rules.

14. With the aforesaid observations and directions, the instant criminal revision is allowed.

15. Registry is directed to send a copy of this order to the concerned trial Court for compliance through usual and fax mode immediately. The Applicant may also file a copy of this order before the Court below for compliance.

16. Certified copy of the order as per rules.

Sd/-
Chandra Bhushan Bajpai
Judge