

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 443 of 2016**

Mannu Lal Gejendra S/o Shivratan Lal Gajendra Aged About 53 Years
R/o Dangarh, Thana Dangarh, Tehsil Ambagarh Chowki, Civil &
Revenue District Rajnandgaon Chhattisgarh

---- Petitioner**Versus**

State Of Chhattisgarh Through Police Station Ambagarh Chowki, Civil
& Revenue District Rajnandgaon Chhattisgarh

---- Respondent

For the Petitioner	:	Shri Punit Ruparel, Advocate.
For the Respondent/ State	:	Ms. M. Asha, Panel Lawyer on advance copy.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****18/04/2016**

1. Heard.
2. Issue notice to the Respondent.
3. Ms. M. Asha, Panel Lawyer accepts notice on behalf of the State/
Respondent.
4. Learned counsel for the Petitioner submits that looking to the entire facts of the instant case a very short question is involved i.e. whether by invoking the inherent jurisdiction of this Court an opportunity could be granted to the Petitioner for cross-examination of witnesses Dr. Ashish Singh Thakur (PW-2) and Deepak Kumar Sahu (PW-3). Learned Counsel further submits that at the relevant time, the original counsel of the Petitioner was not available, his junior took part in the proceedings, the trial Court closed the opportunity of cross-examination. In view of above, the instant petition may be heard finally at the motion stage itself.

5. On due consideration, the instant Cr.M.P is heard finally at the motion stage itself.

6. Facts in brief required for decision of the instant Cr.M.P are that the Petitioner is facing trial before the Judicial Magistrate, First Class, Ambagarh Chowki, Rajnandgaon, Chhattisgarh in Crime Case No. 544 of 2013 under Section 409 of the Indian Penal Code, 1860 (for short 'the IPC') and the matter was listed for recording evidence of the prosecution witnesses. On 7.8.2015, Dr. Ashish Singh Thakur (PW-2), Senior Superintendent of Post Office and Deepak Kumar Sahu (PW-3), Retired Employee of the Department concerned appeared before the Court for their examination. Their Examination-in-Chief were recorded. On that date, one junior counsel had appeared on behalf of the Petitioner. The original counsel representing the Petitioner was out and an application for grant of time to cross-examine the said witnesses were filed on behalf of the Petitioner but the same was declined as the Petitioner was represented through the junior counsel who was simply availed opportunity of cross-examination and asked no questions in the cross-examination of those two witnesses. Thereafter, on 17.12.2015, an application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been filed to recall those prosecution witnesses for the cross-examination. The Court below after hearing the matter dismissed the said application vide order dated 25.1.2016 and held that as the Petitioner was given an opportunity to cross-examine those witnesses no further opportunity could be granted. Against the order dated 25.1.2016, the Petitioner had preferred Criminal Revision No. 12 of 2016. Learned Revisional Court vide order dated 2.3.2016 held that the revision filed by the Petitioner is not maintainable hence, dismissed the said revision. Against the said order passed by the Revisional Court, the Petitioner has preferred

the instant Cr.M.P praying that as both the witnesses are of material for proper adjudication of the case, original counsel was out, the Petitioner had filed an application for adjournment, the junior counsel though represented the Petitioner, but he has not asked any question to those witnesses, for the purpose of trial an opportunity may be granted to the Petitioner. Hence, it is prayed that the impugned orders dated 02.03.2016 and 25.1.2016 may be set aside and an opportunity to cross-examine those two witnesses may be given.

7. Learned counsel for the Petitioner duly supported the entire grounds taken in the instant Cr.M.P and submitted that an opportunity may be granted. The Petitioner is ready to bear the expenses of those witnesses as per law and he is ready to cross-examine those witnesses as and when the trial Court directs.

8. On due consideration and after perusal of the impugned order dated 25.1.2016, the other interim applications filed on behalf of the Petitioner and also the facts that on 7.8.2015 Dr. Ashish Singh Thakur (PW-2) and Deepak Kumar Sahu (PW-3) were examined and one Shri Hitesh Malikar, Advocate represented the Petitioner and asked nothing in the cross-examination and further also it appears from the examination-in-chief that they are material witnesses, a reasonable opportunity is required to be given to the Petitioner. Accordingly, the instant Cr.M.P is liable to be allowed and it is allowed. The impugned orders dated 02.03.2016 and 25.1.2016 are hereby quashed.

9. The trial Court is directed to award a reasonable opportunity by fixing a date for cross-examination of PW-2 and PW-3 in the matter and summon those witnesses as per provisions of law. The entire expenses as per law for those two witnesses shall be borne by the Petitioner. The Court below shall fix a date as per convenience of the Court for cross-examination of those

witnesses. Even after affording a reasonable opportunity for cross-examination of those witnesses, if the Petitioner failed to cross-examine those witnesses through their counsel, no further opportunity would be granted for the same. The Petitioner is also directed to cooperate with the trial of the matter as well as cross-examination of those two witnesses including recording of evidence of other prosecution witnesses also.

10. The Petitioner may file a copy of the order before the Court below for compliance within a month from today.

11. Registry is further directed to transmit a copy of the order immediately to the Court below through usual and fax mode.

12. The instant Cr.M.P is allowed.

Sd/-

Chandra Bhushan Bajpai
Judge