

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 697 OF 2016

Vivek Gupta @ Bablu, S/o Kailash Chand Gupta, aged about 23 years, R/o Dhanpur, Police Station- Pendra, District Bilaspur (C.G.)

... Applicant

Versus

State of Chhattisgarh, through the Incharge, Police Station Chirmiri, District Koriya (C.G.)

... Non-applicant

For Applicant	:	Ms. Sharmila Singhai, Advocate.
For Non-applicant/State	:	Mr. Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/07/2016

1. The present revision petition under Section 397 & 401 CrPC has been filed challenging the order dated 23.6.2016 passed by the Second Additional Sessions Judge, Manendragarh, District Koriya, in Sessions Trial No. 53 of 2009, whereby the application for recalling of the witness, Dr. Manoj Kumar Sahu, has been rejected.
2. Facts of the case in brief is that on 16.4.2009 the deceased, Reena Gupta, is said to have committed suicide by hanging herself at her residence. The Applicant and his family members have been implicated for the offence under Section 306 IPC and the matter has been put to trial vide Sessions Trial No. 53 of 2009.
3. Though the trial is of the year 2009, the prosecution closed its evidence only as late as on 7.4.2016 and thereafter after recording of the statement of the accused persons under Section 313 CrPC, the matter was fixed for recording of the defence evidence on 23.4.2016. One of the defence witnesses was Dr. Manoj Kumar Sahu who is posted at the Medical College, Bhopal and it is the defence of the Applicant-accused that the deceased, Reena Gupta, was in fact a patient of depression and was undergoing treatment from the said Doctor Manoj Kumar Sahu and he had been summoned only to establish the ailment of the deceased and the

treatment provided by the said witness. The said witness entered appearance before the Court on 4.6.2016. However, on the said date the evidence of Dr. Manoj Kumar Sahu could not be completed as he had not brought the original records available with him. Thereafter, the matter was fixed for the evidence of the remaining defence witnesses on 23.6.2016 and on 22.7.2017, on which date the other defence witnesses were examined and the matter has been fixed for final arguments on 27.7.2016.

4. Meanwhile, on 23.6.2016, an application for recalling of the defence witness, i.e., Dr. Manoj Kumar Sahu, was filed by the Applicant which has been rejected by the Court below vide impugned order dated 23.6.2016 on the ground that the said witness has already been examined and that the object behind moving of the said application was with an intention of delaying the trial.

5. Counsel for the Applicant challenging the impugned order submits that it is a case where the trial commenced in the year 2009 and it took almost 7 years for the prosecution to complete its evidence and the evidence of the prosecution was closed on 7.4.2016 and it is only from 7.4.2016 for the first time the defence witnesses were ordered to be examined and on the very next date i.e., on 23.4.2016 the Applicant has filed his list of witnesses before the Trial Court.

6. Counsel for the Applicant would further submit that a perusal of the order-sheets of the Trial Court would clearly reflect that at no point of time can the Applicant-accused be blamed for the delay of trial neither can the Applicant be accused of adopting delaying tactics in the course of conducting of the trial. She further submits that the order-sheets itself would show that there were effective hearings held practically on all the dates of hearing after the prosecution evidence was closed. Therefore, the impugned order to the extent of rejecting the application of the Applicant on the ground of delaying tactics is bad in law and deserves to be quashed.

7. Counsel for the Applicant next submits that all that the Applicant has prayed is for recalling of the witness i.e., Dr. Manoj Kumar Sahu who has already been

examined but without original records pertaining to the deceased, so that the next time he could come prepared with all the original records to substantiate the defence of the Applicant accused. She further submits that denial of the same would amount to denial of justice to the Applicant while defending his case during trial and would also not fit into the terminology of a "fair trial".

8. Counsel for the State however opposes the revision petition and submits that the impugned order does not warrant any interference and by itself is self-explanatory.

9. Considering the total facts and circumstances of the case more particularly the fact that the prosecution itself took more than 7 years for the conclusion of the prosecution evidence, under the said facts and circumstances, it would be in the interest of justice, if another opportunity is given to the Applicant for summoning the witness to substantiate his defence particularly when the witness who had on earlier occasion being summoned appeared before the Court without original records with him.

10. It is a fit case where the impugned order dated 23.6.2016 deserves to be and is accordingly quashed and at the same time the application for recalling of the witness, Dr. Manoj Kumar Sahu, deserves to be and is accordingly allowed.

11. It is informed that the matter is fixed before the Court below tomorrow i.e., on 27.7.2016. Let necessary steps be taken up by the Counsel for the Applicant to inform the Court below in respect of the order passed by this Court today.

12. It is directed that the Court below shall proceed further to issue necessary summons to the said witness, Dr. Manoj Kumar Sahu, with an intimation that he should come with all the original records pertaining to the deceased on a date which will be provided by the Court below and thereafter the matter may be decided in accordance with law on its own merits.

13. The Criminal Revision accordingly stands allowed with the aforesaid observations/directions. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge