

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 861 OF 2016

Ramesh Kumar Bunkar S/o late Nandkishore Bunkar, Aged about 52 years, R/o House No. 1412, Road No.30, Shanti Nagar, Bhilai, District Durg (CG).

---- Petitioner

Versus

State of Chhattisgarh through the District Magistrate, District Durg (CG) Through the Police Station, Purani Bhilai, District Durg (CG).

... Non-applicant

For Petitioner	:	Shri R.S. Baghel, Advocate.
For Respondent/State	:	Shri O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/08/2016

1. The present petition under Section 482 Cr.P.C. has been preferred assailing the order dated 11.05.2016 whereby the Judicial Magistrate First Class, Bhilai-3, Distt. Durg in Criminal Case No.3104/2011 has rejected the application under Section 310 Cr.P.C. moved by the petitioner/accused. The petitioner also challenges the order dated 28.07.2016 passed by the 1st Additional Sessions Judge, Durg in Criminal Revision No.147/2016 rejecting the revision petition and upholding the order dated 11.05.2016 passed by the JMFC, Bhilai-3.
2. Facts in brief is that the petitioner and the other accused persons in the instant case have been prosecuted before the JMFC, Bhilai-3 in Criminal Case No.3104/2011 for the offence under Sections

454,457,380 and 414 IPC. The offence is said to have been committed by the accused persons on 02.11.2002 and the matter has been put to trial since then and it is going on. It is a case where out of total 38 witnesses cited by the prosecution, 32 witnesses have been examined. The present petitioner in the instant case on 05.04.2016 moved an application under Section 310 Cr.P.C. seeking for spot inspection of the place of incident. The said application was rejected by the JMFC, Bhilali-3 on 11.05.2016 against which revision was preferred which was also rejected vide order dated 28.07.2016.

3. Learned counsel appearing for the petitioner submits that it is a case where spot inspection of the place of incident was very much necessary for the Magistrate to better understand the location and the allegation of the charge levelled. The offence committed could not have been better understood by the Magistrate in the course of appreciating the evidence which have been adduced by the prosecution. He further submits that no prejudice would be caused to either parties in case the application is allowed, rather it would be more beneficial to the Magistrate for final adjudication of the trial.
4. The State counsel however opposes the petition on the ground that the two orders passed by the courts below are by itself self explanatory and do not warrant any interference.
5. As both the orders are reasoned orders categorically dealing with the submissions put forth by the petitioner, this court is of the opinion that firstly such application could not have been insisted upon by the petitioner for the reason that the power under Section 310 Cr.P.C.

has been conferred upon the Judge or the Magistrate before whom trial is being conducted and it is his discretionary power. In the opinion of the court it was necessary to view the purpose of properly appreciating the evidence, the discretionary power conferred was upon the Magistrate or the Judge alone and it cannot be exercised at the behest of the accused persons. Further, in the instant case the application under Section 310 Cr.P.C. has been moved after 13-14 years from the date of commission of offence and with the passage of time the premises of bank must have brought many changes to its structure, and therefore, it would not have been of much relevance if the Magistrate would have after 14 years of commission of offence would have visited and conducted the spot inspection.

6. For the foregoing reasons, this court is of the opinion that both the courts below have not committed any illegality or infirmity while rejecting the application under Section 310 Cr.P.C. filed by the petitioner.
7. Accordingly, the petition being devoid of merit is liable to be and is dismissed.

Sd/-

(P. Sam Koshy)
Judge