

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 908 of 2016

Ganesh Lal Meshram S/o late Shri Mohan Lal Meshram, aged about 46 years, R/o Amapara, Durg, PS Mohan Nagar, Dist. Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh through Anti Corruption Bureau, Raipur, District Raipur (CG)

---- Respondent

For Applicant	:	Shri Rajesh Tiwari on behalf of Shri Vivek Sharma, Advocate.
For Respondent/State	:	Shri Garry Mukhopadhyay, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/10/2016

The present revision petition under Section 397 read with Section 401 of CrPC has been filed assailing the order dated 09.09.2016 passed by the learned Special Judge, Durg in Special Case No. 04/2006 whereby the application under Section 311 CrPC seeking for recalling of two Panch witnesses has been rejected by the Court below.

2. At this juncture, it is relevant to mention that the applicant is being prosecuted by the Court below for the offence under Section 7 and 13 (1) (d) read with section 13 (2) of PC Act on a complaint being registered by the Anti Corruption Bureau, Raipur. The matter was put to trial and all the prosecution witnesses have already been examined and the statement of the accused under Section 313 CrPC has also been recorded. Subsequently, on 08.07.2016 i.e. at the fag end stage of trial, the application under Section 311 CrPC seeking for recalling of the Panch witnesses was filed by the

applicant which was rejected vide impugned order dated 09.09.2016 leading to filing of the present revision petition.

3. Counsel for the applicant refers to the evidence of PW-5 Raju Rajput and draws the attention of this Court to paragraph-30 of his statement stating that there is a discrepancy in the statement made in paragraph-30 by the said witness and therefore the applicant wanted to recall the Panch witnesses to further cross-examine in respect of the statement made by PW-5 in paragraph-30. Counsel for the applicant submits that non allowing the said application under Section 311 is bad in law for the reason that in case if the witnesses are not recalled for further cross-examination, the applicant would not get a fair opportunity of defending himself and it would amount to denial of fair trial and therefore the order of the Court below deserves to be set aside.

4. State counsel opposes the revision petition only on the ground of delay on the part of the applicant in moving the said application. According to the State counsel, the evidence of PW-5 was recorded as early as on 06.09.2008 whereas the present application was filed after about eight years i.e. on 08.07.2016 and there is no explanation or justification given by the present applicant for not moving this application on an earlier occasion. It is also an admitted fact that the applicant was well aware of the proceedings and the evidence which has been recorded during the course of trial. But he did not think it proper to move this application during all this period and only when the matter has reached to its fag end stage of trial, the present application has been filed. Thus, the State counsel prayed for rejection of the present revision petition.

5. The proceedings drawn before the Court below itself clearly reflects that the evidence of PW-5 was recorded as early as 8 years ago and the witness was exhaustively cross-examined so were the Panch witnesses

also. In the event if the applicant thought that there was any discrepancies, he should have moved the application promptly. But, now, at this fag end stage of trial the applicant cannot be permitted for recalling the witnesses with an intention of improving the case of defence.

6. In the matter of **Vadiraj Naggappa Vernekar (Dead) through LRS v. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410** the Hon'ble Supreme Court has in very categorical terms held that the recalling of a witness to fill up the lacunae in the evidence is not permissible.

7. In the view of aforesaid judicial pronouncement and also considering the factual background of the case, this Court does not find any illegality or infirmity committed by the Court below while passing the impugned order dated 09.09.2016.

8. Thus, the present Criminal Revision being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE