

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1097 of 2015**

1. Ishwar Dewangan, S/o Daya Prasad Dewangan, aged about 49 years, resident of Naya Risad, Balco, District Korba, Civil And Rev. Distt. Korba Chhattisgarh.

**---- Applicant
(In Jail)**

Versus

1. State of Chhattisgarh, through the Police Station Assistant District Excise Officer, Korba.

---- Respondent

For Applicant:
For Respondent:

Shri Shivang Dubey, Advocate.
Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****12/01/2016**

1. Challenge in this revision is to the order dated 4.11.2015 passed by the Special Judge (NDPS), Korba in Case No.3/15 closing the right of the applicant to cross-examine the Investigating Officer.
2. Brief facts of the case are that the applicant is facing trial in connection with the offence under Section 20 (B) (II) C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'the NDPS') in Special Case No.3/15 pending in the Court of Special Judge (NDPS), Korba. On 18.9.2015 the said matter was fixed for recording of evidence of the investigating officer. After completion of examination-in-chief of this witness, his cross-examination continued by the defence counsel upto tea time. However, thereafter the counsel for the accused prayed for an adjournment on the ground that he was not feeling well. Therefore, the

matter was adjourned for 3.10.2015. On 3.10.2015 as the investigating officer was not present, the matter was adjourned for his presence and recording of evidence. On 3.11.2015 again an adjournment was sought on behalf of the accused on the ground that original counsel was busy on account of some urgent work. Considering the fact that the witness was present for recording of evidence, this request of the counsel was allowed by the Court below subject to payment of cost of Rs.1,000/- and fixed the case for 4.11.2015. On 4.11.2015 also an application on behalf of the accused was filed seeking adjournment on the ground that original counsel was not well. The Court below rejected this application and consequent thereto closed the right of the accused to cross-examine the the investigating officer. It is this order which has been assailed by the applicant in this revision.

3. Counsel for the applicant submits that if the applicant is not permitted to cross-examine the investigating officer, he would suffer an irreparable loss because in the cases of NDPS Act cross-examination of the investigating officer is very important. He submits that the applicant is willing to pay suitable cost for non-examination of the investigating officer and the inconvenience caused to him.
4. Heard learned counsel for the parties and perused the impugned order.
5. Considering the larger interest of justice and the fact that the Investigating Officer may be a necessary witness for the applicant and that the applicant is ready to pay suitable cost of Rs.5,000/- (Rupees Five Thousand) apart from Rs.1,000/- (Rupees One Thousand), as directed earlier, it appears appropriate for this Court to direct the trial Court to give one more opportunity to the applicant to cross-examine the Investigating Officer. Order accordingly. Let this amount be deposited before the trial

Court.

6. It is made clear that if on the next date to be fixed by the trial Court the applicant fails to cross-examine the investigating officer, the trial Court would be at liberty to close his right of cross-examining that particular witness. The trial Court shall make all effort to conclude the case at an early date.
7. In view of observations and directions as above, the revision is allowed and the order impugned dated 4.11.2015 closing the right of the applicant to cross-examine the investigating officer is hereby set aside.

Sd/-

(Pritinker Diwaker)
Judge

jjyotishi/ roshan