

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 793 of 2016**

1. Tejram Verma S/o Khumuram Verma Aged About 47 Years R/o Village Mohda, Chowki Silyari, Police Station Dharsiwa, District Raipur Chhattisgarh
2. Piyush Verma S/o Tejram Verma Aged About 20 Years R/o Village Mohda, Chowki Silyari, Police Station Dharsiwa, District Raipur Chhattisgarh

---- Applicants**Versus**

- State Of Chhattisgarh Through : The Station House Officer, Police Station Dharsiwa, District Raipur Chhattisgarh

---- Non-applicant

For Applicants	:	Mr. P.P. Sahu, Advocate.
For Non-applicant-State	:	Mr. U.K.S. Chandel, Panel Lawer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****26/08/2016**

1. The present Criminal Revision under Section 397 read with Section 401 of the Cr.P.C. has been preferred challenging the order dated 03.08.2016 passed by the VIIIth Additional Sessions Judge, District Raipur in Sessios Trial No. 154/2015.
2. By way of the said impugned order dated 03.08.2016 the Court below has rejected the Application filed on behalf of the present Applicants for issuance of summons to the witnesses who witnessed the incident so as to examine them as defence witness.

3. Learned Counsel for the Applicant submits that it is the case where the evidence of the prosecution witnesses started on 25.09.2015 and was closed on 17.05.2016. Subsequently on two consecutive dates i.e. 20.05.2016 and 13.06.2016 the presiding officer was on leave. On 21.06.2016 the statement of the accused were recorded and on the same date the accused persons submitted a list of the witnesses to be examined on behalf of the defence. Summons were also issued and the case was ordered to be listed for appearance of the defence witnesses on 20.07.2016. That on 20.07.2016 it was informed that summon issued to one of the witness Sushil Verma was served and summon issued to the other witnesses namely Doctor Praveen could not be served for the fact that he could not be identified at the address as there were other persons of same name available in the establishment. On 20.07.2016, when the matter came up for hearing since the witnesses on behalf of the defence were absent and the matter was adjourned to be taken up on 26.07.2016 because of the undertaking given by the Applicants as in the order sheet it is reflected that they had given a specific undertaking that they shall ensure presence of the defence witnesses on the next date of hearing.
4. However subsequently on the next date of hearing on 26.07.2016 the accused Applicants could not present the defence witnesses cited by them and said to have again moved an application for issuance of proper summons to the witnesses as according to the Accused on contacting the said witnesses it was said by the witnesses that they would appear before the Court only on receipt of summons

from the Court and not otherwise. It was further alleged that since all the male members of the family are in jail only female members in the family were available they could not convince and arrange for the defence witnesses to come to the Court. However, vide the impugned order the Court below rejected the said application and has fixed the case for final hearing on 30th August, 2016.

5. Learned Counsel for the Applicants submits that it is the case where one of the witnesses the Doctor which the Petitioner intended to call for was originally the prosecution witness and since the prosecution did not examine the same it becomes now necessary for the Applicants to call the said witness on behalf of defence.
6. It was further contended that the other witnesses to whom the summon infact has been served but since they did not appear they could not be examined and that can not be the reason for denying the Applicants the right of examining his defence witnesses who were otherwise independent witness and that these persons could be forced to remain present only by the Court. Counsel for the Applicants further submits that in case if the Applicants prayed again to the Court below for issuance of summons to these witnesses the Applicants accused would get an opportunity of being properly defended in the Court of law and this would also help the Court in reaching to a fair decision in the case.
7. Learned State Counsel however opposing the Petition submits that on 20.07.2016 there was specific undertaking given by the Counsel for the Applicants accused and the matter at his request was fixed for 26.07.2016, and on 26.07.2016 the Applicants accused failed to

produce any of these witnesses and therefore the Court was justified in passing the said impugned order.

8. Having considered the facts and submissions made by the Counsel on either side and a perusal of the Record it appears that the right of the Applicants accused in leading the witnesses on his behalf appears to have closed. According to the Court below inspite of the fact that summons were issued though the witnesses were not present, the accused Applicants were ordered to keep all the witnesses on behalf of defence present before the Court on the next date of hearing and again the said witnesses are not present.
9. Learned Counsel for the Applicants submits that the observation made by the Court below is incorrect to the extent that once when these witnesses are independent witness and one of them is a Government Doctor they would not be under command of the Applicants accused to make them available in the Court to depose as witness. Therefore it becomes necessary for the Court to issue a proper direction for calling them to be present in the Court so that they can depose before the Court regarding the factual matrix of the case so as to reach to a proper and correct assumption of the facts of the case.
10. In the given facts and circumstance of the case this Court is of the opinion that the order on part of the Court below in closing the rights of the present Applicants by not issuing summons to the witnesses deserves to be recalled and impugned order dated 03.08.2016 stands quashed subject to that extent and it is ordered that the Trial Court may proceed further with the case after issuance of proper

summons to the relevant witnesses cited by the Applicants in their defence and it is also expected that the Court below shall invoke all the powers which are conferred upon it under the provisions of the Cr.PC. for keeping the presence of the witnesses.

11. With the aforesaid directions the present Criminal Revision stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE