

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 490 of 2016

1. Arvind Kumar Shrivastava S/o Late Shri S.P. Shrivastava, aged about 58 years, R/o M 6, Sector 1, Avanti Vihar, Tali Bandha, Raipur, Chhattisgarh.

---- Applicant/Petitioner

Versus

1. State of Chhattisgarh, through Anti Corruption Bureau, Raipur, Chhattisgarh.

---- Non-applicant/Respondent

For Applicant – Shri Kishore Bhaduri and Shri Pawan Kesharwani, Advocates.
For Respondent – Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12/07/2016

1. Heard on admission.
2. The matter is admitted for consideration.
3. With the consent of the parties, heard the matter finally.
4. Learned counsel for the applicant fairly conceded that on 24-11-2015 when the prosecution witness CSP Mana, Mukesh Khare despite many efforts ultimately gave his appearance for recording his evidence, the examination-in-chief was completed and on account of sad demise of near relative of original counsel it was prayed that one opportunity to cross-examine the witness may be given. The Court allowed the prayer, completed the examination-in-chief and postpone the cross-examination of the said witness. Thereafter, the matter was listed many times for cross-examination of said witness, but, he failed to appear. Ultimately, the said witness gave his appearance on 30th March, 2016 before the trial Court. On the

said date, an application on behalf of the applicant/accused was filed regarding the fact that original counsel Shri J.P.Sharma is ailing and doctor advised him for rest till 31st March, 2016 and since only he is aware regarding facts of the case, hence an adjournment was sought for cross-examination of the said witness. The Court below rejected the said application on 30-03-2016 and posted the matter for further proceeding, i.e., statement of the accused.

5. Learned counsel for the applicant would submit that as the doctor advised Shri Sharma, counsel for the accused/applicant for bed rest till 31-03-2016, if this fact remained acceptable then the order of the Court below to close the opportunity of cross-examination on 30-03-2016 requires sympathetic interference; an opportunity may be given for cross-examination of the said witness and the applicant is ready to pay whatever cost may be imposed in this behalf.

6. Learned State counsel supported the order passed by the trial Court and submitted that the order is well founded on facts, hence, the instant Cr.M.P. may be dismissed.

7. Perused copy of the medical certificate and the order passed by the Court below.

8. From perusal of the said certificate, it appears that learned counsel was suffering at the relevant time with complications regarding diabetes and other ailment and the doctor advised for rest upto 31-03-2016. With this background, the Court ought to have given any date after 31-03-2016 so that counsel for the applicant/accused may appear and cross-examine the said witness who is an important witness. Also as per settled law, a reasonable opportunity is to be given to defend the case.

9. On due consideration of the entire facts, it would be appropriate to grant an opportunity for cross-examination of the said witness. With this, the instant Cr.M.P. filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the

Code') is hereby allowed. The trial Court is directed to grant one opportunity for cross-examination of the said witness. The trial Court may fix a date as per Court's convenience for the cross-examination of that witness. The trial Court is further directed to impose a reasonable cost as per discretion and facts of the case for earlier adjournment and non-examination of said witness.

10. The applicant is directed to file copy of this order before the Court below on or before **22-07-2016**. On presentation of such order, the trial Court is directed to fix a date for cross-examination of the said witness and also to issue appropriate summons/warrant, as the case may be, for presence of the said witness before the court and also to determine the adjournment cost. The applicant shall deposit the cost so imposed under the relevant provision of Section 309 of the Code before the cross-examination of said witness. It is further directed that if upon appearance of the said witness on a date so fixed by the trial Court the applicant fails to take opportunity for cross-examination either or not deposits the cost so imposed, the right to cross-examine the said witness shall be ceased and the Court below may further proceed with the case.

11. Registrar (Judicial) is also directed to send copy of the order to the Court below through usual mode and fax mode immediately.

12. Certified copy till 13th July, 2016.

13. Cr.M.P. disposed of.

Sd/-

(Chandra Bhushan Bajpai)
J U D G E