

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 584 OF 2016

Mohan Lal Agrawal, S/o Late Madan Lal Agrawal, aged about 55 years,
R/o Seetamani, Main Road, Korba, P.S. Korba, Tahsil and District Korba
(C.G.)

... Applicant

Versus

Rudhmal Agrawal, S/o Late Bihari Lal Agrawal, aged about 62 years, R/o
Seetamani, Main Road, Korba, P.S. Korba, Tahsil and District Korba (C.G.)

... Non-applicant

For Applicant	:	Mr. Sandeep Dubey, Advocate.
For Non-applicant	:	Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/08/2016

1. The present petition under Section 482 of CrPC has been preferred by the Applicant assailing the order dated 25.4.2016 passed by the Sessions Judge, Korba in Criminal Revision No. 31 of 2016. Vide impugned order dated 25.4.2016, the Sessions Court exercising the revisional powers dismissed the revision preferred by the Applicant against the order dated 16.3.2016 passed by the Chief Judicial Magistrate, Korba in Criminal Complaint Case No. 625 of 2014 whereby his right to lead defence evidence was foreclosed and the matter was proceeded for final arguments.

2. Facts of the case in brief are that the Non-applicant/Complainant, Rudhmal Agrawal, had filed a complaint case against the present Applicant who was defendant-accused before the Trial Court somewhere in June, 2014 under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the N.I. Act'). The case has been registered as Criminal Complaint Case No. 625 of 2014 and the trial also was under

progress. Meanwhile, in the course of trial, on 15.5.2015, the Non-applicant/Complainant was examined and cross-examined and later on discharged. After the conclusion of the evidence of the Complainant side, the statement of the accused Applicant was recorded on 30.5.2015 under Section 313 of CrPC. On 16.3.2016, since no evidence was adduced by the defence in spite of repeated opportunities for a considerable period of time being granted, the Trial Court has closed the right to lead defence evidence and has fixed the matter for final arguments. The said order dated 16.3.2016 was put to challenge vide Criminal Revision No. 31 of 2016 before the Sessions Judge, Korba who also vide the impugned order dated 25.4.2016 found no illegality or infirmity in the order passed by the Trial Court. It is these two orders which the accused Applicant has challenged in the present petition under Section 482 of CrPC.

3. Learned Counsel for the Applicant submits that he has not been granted sufficient opportunity to lead evidence and therefore it amounts to denial of fair trial and fair opportunity of defence. According to the Counsel for the Applicant, no prejudice would have been caused to the Complainant side in case if one opportunity would had been further granted by the Trial Court so that the Applicant could have adduced his evidence before the Trial Court. He further submits that it is a case where his application under Section 311 of CrPC was pending consideration before the Trial Court and therefore he was reluctant in adducing the defence evidence expecting the Trial Court to allow the said application under Section 311 by which the Complainant would had been further cross-examined and thereafter the Applicant would have adduced his defence evidence.

4. Per contra, learned Counsel for Non-applicant/Complainant vehemently opposing the petition submits that it is a case where the Applicant has in fact been granted opportunity to lead defence evidence for

almost one year and still he did not chose to adduce any evidence in his behalf and therefore the Court below had no other option but to proceed further and therefore it cannot be said that the Court below has not conducted the trial in a fair manner or was there any denial of fair opportunity of defence to the accused Applicant. Thus, prayed for rejection of the petition.

5. Having considered the submissions put forth on behalf of either side what is clearly reflected is that after the evidence of the prosecution wherein the Complainant was examined on 15.5.2015, the statement under Section 313 of CrPC of the accused was recorded on 30.5.2015 and the matter for the first time was ordered to be fixed for defence evidence on 6.7.2015. The matter thereafter was adjourned on various occasions at the instance of the accused Applicant on some pretext or the other and finally the Court below on 16.3.2016 refused to further grant adjournment in this regard and closed the right of the defence evidence and has proceeded by fixing the case for final arguments.

6. It is also pertinent to mention at this juncture that though the right to lead defence evidence was closed on 16.3.2016, the Applicant had in fact subsequently moved the application under Section 311 of CrPC for recalling of the Complainant as a witness and at that point of time also the Applicant did not feel it proper for bringing the witness of the defence before the Trial Court. Thus, the conduct and the attitude of the Applicant itself speaks volumes of his intention firstly in not adducing the evidence in support of his defence in spite of sufficient period of time being granted and secondly that even after the right having been closed in stead of making available the evidence on the next date of hearing he preferred to file a fresh application under Section 311 of CrPC that would bring the clock back to the stage of the Complainant evidence which clearly gives an

indication of the fact that it was filed with a clear intention of prolonging the trial.

7. Further, the fact that the Trial Court had granted sufficient opportunity of adjournments and time is also reflected from the fact that the matter was fixed for defence evidence since 30.5.2015 and it is only on 16.3.2016 i.e. after the lapse of about 10 months that the Trial Court was compelled to pass an order which in the opinion of this Court by no stretch of imagination can be termed to be illegal or bad in law nor can it be brought within the ambit of denial of opportunity of defence or denial of fair trial.

8. Thus, in the opinion of this Court, the two Courts below have not committed any error of law while passing the impugned orders. The Criminal Misc. Petition being totally devoid of merit the same is accordingly dismissed.

Sd/-

(P. Sam Koshy)
Judge