

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 511 OF 2016

Farida @ Farid Ahmed, S/o Siddique Ahmed, aged about 50 years, R/o Rajatalab, Raipur, Tahsil, Civil and Revenue District Raipur (C.G.), Permanent Address – Village and Police Station Moudaha, District Hamirpur (U.P.)

... Revisioner

Versus

The State of Chhattisgarh, through Station House Officer, Police Station Moudahapara, Raipur, Civil & Revenue District Raipur (C.G.)

... Respondent

For Revisioner	:	Mr. Y.C. Sharma, Advocate.
For Respondent-State	:	Mr. Gary Mokhopadhyay, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/08/2016

1. The present revision under Section 397/401 of CrPC has been preferred by the Revisioner assailing the order dated 10.5.2016 passed by the Eight Additional Sessions Judge, Raipur in Sessions Trial No. 44 of 2006.
2. Vide impugned order dated 10.5.2016, the Court below has rejected the application filed by the Revisioner seeking not to accept the statements of the witnesses whose statements have been recorded in the first trial and who now have either expired or are not traceable.
3. The facts relevant for the adjudication of the revision petition are that the Revisioner is an accused in a crime registered at Police Station Moudahapara, Raipur and after investigation a charge-sheet was filed before the Court of Additional Chief Judicial Magistrate, Raipur against 13 accused persons including the Revisioner. The Revisioner at the time of filing of challan was declared as an absconder and there were many other accused who were also declared absconders. The case was registered as

Criminal Case No. 1766 of 2005. The said trial stood concluded and the judgment was also passed on 8.3.2007 convicting the accused persons. Subsequently, a few more accused persons were also arrested and put to trial and in whose case also the Trial Court passed a judgment on 20.9.2011. It is much afterwards that the Revisioner also was arrested and was put to trial wherein charge under Sections 148, 148, 302/149, 302/120-B of IPC and Sections 25 and 27 of the Arms Act have been framed.

4. Pending the trial an application under Section 299 of CrPC was moved on behalf of the prosecution to accept the evidence of PW-1 Mani *alias* Manthanlal, PW-10 Gopal Rao and PW-11 Bheekam Soni as admissible. It was contended that PW-1, Mani after his evidence was recorded at the first instance was not traceable and so far as PW-10 and PW-11 are concerned they have since expired and therefore it was prayed by the prosecution before the Trial Court that under the said factual background the evidence of these persons recorded in the absence of the accused may be accepted as admissible. The Revisioner had objected to the same and had also filed an application not to accept to the statements of these witnesses as admissible, which has been rejected by the Trial Court vide order dated 10.5.2016, leading to filing of the present revision.

5. Learned Counsel for the Revisioner assailing the impugned order submits that the Court below was not justified in rejecting the application and the objection filed by the Revisioner. According to him, the rejection of the objection and the application not to accept the evidence of PW-1 Mani *alias* Manthanlal, PW-10 Gopal Rao and PW-11 Bheekam Soni as admissible amounts to substantially prejudicing the right of the Revisioner particularly so far as his defence is concerned. This, as per the submission

of the Counsel for the Revisioner, would amount to denial of fair trial and would also fall within the ambit of denial of fair opportunity of defence.

6. It was also contended by the Counsel for the Revisioner that the application under Section 299 of CrPC moved by the prosecution itself was bad in law for the reasons that the prosecution has not complied with the mandatory requirements before proceeding under Section 299. According to him, the prosecution ought to have first fulfill the requirement under Sections 82 and 83 of CrPC before invoking the provisions of Section 299 of CrPC and in the absence of fulfillment of the conditions stipulated under Section 82, the provisions of Section 299 have been invoked.

7. According to the Counsel for the Revisioner, as per Section 82 of CrPC the Court below ought to have recorded the evidence before proclaiming the accused as an absconder which in the instant case has not been done and therefore the proceedings drawn under Section 299 of CrPC against the Revisioner would be bad in law and illegal. The contention of the Counsel for the Revisioner also is that the statement recorded before the Committal Court cannot be taken into consideration by the Trial Court for the purpose of treating him to be an absconder. The Trial Court ought to have drawn a fresh proceeding before proceeding under Section 299 of CrPC.

8. In support of this contentions, learned Counsel for the Revisioner has relied upon the decisions rendered by the Supreme Court in the cases of **Vijay Ranglal Chorasiya & Others Vs. State of Gujarat**, 2015 (III) CCR 446 (SC), **Jayendra Vishnu Thakur Vs. State of Maharashtra & Another**, 2009 (3) Crimes 76 (SC) and **Shailesh Kumar Vs. Rajiv Ranjan @ Mantu**, 2010 (0) Supreme (Patna) 32638.

9. Opposing the revision petition, learned Counsel for the State submits that the revision is totally misconceived. According to him, the mandatory requirement before invoking the provisions of Section 299 of CrPC in fact has been drawn up and as such there is no illegality on this context. According to him, the requirement of recording of statement under Section 82 also has been complied with. He drew the attention of the Court to the order-sheet dated 9.1.2016 of the Committal Court wherein there has been a reference made that the statement before declaring the accused an absconder was recorded and only thereafter was he declared as an absconder and permanent warrant of arrest was ordered to be issued. Thus, it cannot be said that the Court below has committed a technical breach while proceeding under Section 299 of CrPC. According to him, the Revisioner having deliberately evaded the arrest for a considerable period of time and in between the trial having progressed in respect of the accused persons who have already been arrested and in the process of the trial against those accused persons material witnesses were examined of which a couple of them are not either available as on date for the reason having died or are not traceable, of which the accused intends to take an advantage now having remained absconding for so long. Thus, the benefit of which cannot be extended to the accused and therefore prayed for the rejection of the revision petition.

10. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what appears from the record is that the Revisioner in the instant case is an accused in a murder case and in addition there were more accused persons who were also involved. Some of the accused persons were arrested. However, some of the accused persons including the Revisioner evaded their arrest and absconded and they were declared absconders. In the process, trial for the accused

persons who have been arrested proceeded and it also culminated. Likewise, some of the accused persons who could be later on arrested were also subjected to trial and which too has culminated. The Revisioner even then did not surrender himself to the majesty of the Court and he could be arrested at a very late stage and put to trial. Some of the witnesses of the prosecution examined at the first instance have either expired as in case of PW-1 Mani *alias* Manthanlal, PW-10 Gopal Rao and PW-11 Bheekam Soni, and some of the witnesses of the prosecution after the evidence and cross-examination at the first instance have changed their address and therefore could not be traced and for which reason these witnesses are not being able to be produced before the Court as prosecution witnesses in the trial so far as the Revisioner is concerned.

11. If we peruse the proceedings it would reflect that the Revisioner had deliberately avoided his arrest and remained an absconder for a long time. In the event if some of the evidence have been recorded the witness of which now cannot be produced before the Court for reasons beyond the power and authority and control of the prosecution, the same cannot be taken into consideration for the advantage of the accused person for the simple reason that if the same is permitted then every accused in a criminal case would try to evade arrest and would wait till the material witnesses have either expired or are not traceable and then surrender before the Court and subject to trial which would be always detrimental to the interest of the prosecution to prove a case against an accused person on account of either the death of the witnesses or they getting untraced.

12. So far as the judgments cited by the Counsel for the Reversioner are concerned, if we peruse the facts of those cases it would clearly reflect that those judgments have been passed under entirely different factual backgrounds and thus the ratio laid down in these judgments are quite

distinguishable from the facts of the present case and cannot be applied in a straightjacket formula under the facts of the present case and they would not come to the aid of the Revisioner thus.

13. The accused person who avoids trial at the initial stage by remaining absconding and subsequently at a later stage when he knows that the material witnesses are not available on account of their death or being not traceable cannot be given the benefit of the evidence which was recorded at the first instance detrimental to the interest of the prosecution. If such an analogy is brought into force then the entire criminal jurisprudence system itself would get jeopardized and it would rather give a premium to the accused person wherein there are more than one accused available. They would make the accused against whom the gravity of offence is less to surrender and undergo the trial and thereafter the main accused after a considerable period of time when the material witnesses have either expired or are not traceable subject him to trial and in whose case the material witnesses already examined cannot be taken into consideration. It would result in the main accused getting scot-free easily and such a situation in the larger perspective would be dangerous in a civilized society governed by the rule of law.

14. The Supreme Court in the case of **Central Bureau of Investigation Vs. Abu Salem Ansari and Another**, 2011 (4) SCC 426, in paragraph 5, dealing with the provisions of Section 299 has held as under :

“5. As regards the first respondent, sub-section (1) of section 299 would apply as he, an accused person, was absconding, his case is already split up and has to undergo the trial. Obviously, the evidence adduced in the earlier trial cannot be used against the first respondent except as provided in sub-section (1) of section 299 CrPC. In the circumstances, if the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be

justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused.”

15. On the basis of the discussions held in the preceding paragraphs as also the ratio laid down by the Supreme Court in the case of **Abu Salem** (*supra*), in the opinion of this Court the Trial Court also has not committed any error of law while rejecting the objection and the application moved by the Revisioner accused seeking not to accept the evidence of the witnesses who are not traceable or who have died as admissible.

16. So far as the contention of the Counsel for the Reversioner in respect of the proceeding before the Committal Court being taken into consideration by the Trial Court for declaring the accused as an absconder being bad in law the same is not sustainable. From the record what is reflected is that before declaring the Revisioner accused as an absconder, the proceedings had in fact been complied with under the provisions of CrPC and such a proceeding once having already undertaken at the stage of committal of the trial would not be required to be undertaken again by the Trial Court where the matter is being subjected to trial or else it would amount to repeat of a procedure which has already been undertaken further resulting in more delay in the conclusion of trial.

17. Thus, the order dated 10.5.2016 passed by the Eight Additional Sessions Judge, Raipur in Sessions Trial No. 44 of 2006 being well reasoned and a well founded order does not warrant any interference whatsoever. Accordingly, the present revision petition being devoid of merits, the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge