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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 694 of 2016

- Pawan Kumar Agrawal S/o Shiv Kumar Agrawal, Aged About 31 Years, R/o Old Bus Stand, Ambikapur, P.S. & Post Ambikapur, Civil And Rev. Distt. Surguja Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Collector Surguja, Ambikapur, District Surguja Chhattisgarh.
2. Ramavatar Agrawal S/o Late Satyanarayan Agrawal, Aged About 56 Years, R/o Sadar Road, Near State Bank, Ambikapur, P.S. & P.O. Ambikapur, Civil And Rev. District Surguja Chhattisgarh.
3. Sushil Kumar Sindhi S/o Unknown Aged About 28 Years
4. Bhagchand Sindhi S/o Unknown, Aged About 60 Years,

All R/o Imlipara, Khajurpara, Ambikaupr, P.S. & P.O. Ambikapur, Civil and Revenue District Surguja Chhattisgarh.

---- Respondents

For Petitioners : Ms. Priyanka Mehta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order On Board By

05/07/2016

1. The petitioner through the present Criminal Miscellaneous Petition has assailed the order dated 06/06/2016 passed by the Fifth Additional Sessions Judge, Ambikapur, District Surguja (C.G.) in Criminal Revision No. 18/2016, by way of said impugned order the revisional Court has rejected the revision by the present petitioner against the order passed by Executive Magistrate (City), Ambikapur, District Surguja (C.G.) in Criminal Case No. 170/2015, in which the evidence of the respondent No. 2, who was the applicant before the Court below was also examined and subsequently again entered before the Executive Magistrate on 05/03/2016 and made a statement that the

earlier statement that he had given was by way of fraud played upon him and therefore he wanted to be re-examined before the Court below, which was allowed by the Executive Magistrate on 05/03/2016. This order dated 05/03/2016 was challenged by way of present revision petition and the Revisional Court also on 06/06/2016 has rejected the revision petition filed by the petitioner.

2. According to the counsel for the petitioner both the Courts below have failed to appreciate that the provision under Section 311 of Cr.P.C. would not attract under Section 145 of the Cr.P.C. and that such application would only be applicable in criminal trial. She further submits that in the present case there was no application whatsoever made by the respondent No. 2 for the Court to have entertained the same and in absence of a written application the Executive Magistrate could not have passed the order on 05/06/2016. she further submits that the respondent No. 2 had earlier been examined and he was also cross-examined, hence there was no occasion that the respondent No. 2 who has made a statement that the first statement was by way of fraud played upon him and there was no reason of the fraud, therefore the Court below was not justified in passing the order dated 05/03/2016. She further submits that the revisional Court was under a wrong perception of the power of Magistrate under Section 311 of Cr.P.C. for recalling the witness and that the revisional Court has also not properly appreciated that the power under Section 311 of the Cr.P.C. could not have been exercised by the Court below and therefore the impugned order is bad in law.
3. Having considered the contention of the learned counsel for the petitioner and on perusal of the record it would apparently be clear from the fact that admittedly there was a dispute under Section 145 of the Cr.P.C. pending between the present petitioner and the respondents No. 3 & 4 and during

the course said proceeding respondent No. 2 was examined. Non-applicant No. 1 also was examined before the Court below on 07/12/2015 and subsequently the applicant No. 1 entered before the Court below, on 05/03/2013 and made a statement that the earlier statement given on 07/12/2015 was obtained by fraud by other parties and actual fact was not brought before the Court below which was taken note of by the Magistrate and the prayer for fresh evidence and the applicant No. 1 i.e. respondent No. 2 in the present case was allowed.

4. From the order-sheet it appears that the respondent No. 2 had made a statement before the Court below and immediately thereafter he had appeared before the Magistrate and made a statement that there was mischief played by the other party in the course of recording of evidence and which has been accepted by the Court below finding the reason to be satisfactory prayer was allowed on 05/03/2016. If we look into the provision of Section 145 of Cr.P.C. that the Magistrate while exercising the power under Section 145 of Cr.P.C. hence to ensure that dispute is likely to cause breach of peace and in the course of examination of such a dispute if one of the party to the proceedings makes a statement that his earlier statement was obtained by mischief played by state and accepted by the Magistrate, this Court does not find any illegality committed by the Magistrate in exercise of power of enquiry under the provisions of Section 145 of Cr.P.C. So far as the contention of the applicant that there was no application moved in this regard by the other side or for that provision 311 is not attracted in a proceeding under the provisions of Section 145 is concerned that may not be of much consequence in this case for the reason that there was no such application moved by the respondent No.2 under the provision 311. so the claim of the application non-applicant No. 2 that his prayer was under Section 311 of Cr.P.C. which was being conducted under Section 145 and in course if the Magistrate has been brought to the notice of the

Magistrate of any mischief or fraud and the Magistrate order for fresh examination, this Court is of the opinion that it is well within his power to redress the grievance of the parties to dispute. revision petition being devoid of merits is hereby dismissed.

Sd/-

(P. Sam Koshy)
Judge

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