

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION No. 84 of 2015

Raju Malviya S/o Bhaiyaji Malviya, aged about 40 years, R/o Pragya Colony, Baitul, Police Station- Baitul, Civil and Revenue District Baitul (M.P.)

... Applicant

Versus

1. State of Chhattisgarh, through District Magistrate, Raigarh, District Raigarh (C.G.)
2. Station House Officer, Gharghoda, District Raigarh (C.G.)

... Respondents

For Applicant	:	Mr. Vijay Naik, Senior Advocate, along with Mr. Awadh Tripathi, Advocate.
For Respondent-State	:	Mr. B. Gopa Kumar, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : **26.07.2016**

Delivered on : **04.10.2016**

1. The present criminal revision under Section 397/401 of CrPC has been preferred by the applicant challenging the order dated 30.9.2014 passed by the First Additional Sessions Judge, Raigarh in Sessions Trial No. 84 of 2013. Vide the said impugned order, the learned Court below has framed the charges against the present applicant of allegedly having committed offence under Sections 302, 201/34 of IPC, relating to Crime No. 17 of 2012 registered at Police Station Gharghoda, District Raigarh, the charge-sheet of which was filed on 31.5.2013.

2. The applicant is aggrieved by the order of the Court below dated 30.09.2014 whereby offence under Section 302, 201/34 of IPC has been framed against him. According to the applicant, accepting the charge-sheet as it is without any sort of addition or subtraction made in it there is

no material whatsoever available therein to show that the applicant has played an active role firstly in committing the murder and secondly in concealing or causing disappearance of evidence. In the absence of there being any evidence for either of the two, the framing of charge under Sections 302, 201/34 of IPC is per se bad and is therefore sought to be quashed by way of the present revision.

3. Facts in brief for proper adjudication of the case on the basis of the prosecution story are that on 24.01.2012 a dead body of an unknown person was found near the Kurkut Nullah in the forest area of Katangdeeh. The dead body was found by a Forest Guard on duty, namely Suklal Rathiya, and who gave a Merg intimation to Police Station Gharghoda, District Raigarh upon which Merg No.5 of 2014 was registered. In the course of investigation it was reflected that the unknown person was killed on account of assault made from lathis and stone. With an intention of hiding the identity of the deceased, the entire face of the deceased was crushed.

During the course of investigation it was found that the applicant was also involved in the commission of the offence. A charge sheet was filed on 31.05.2013 and vide the impugned order dated 30.09.2014 the charges were also framed.

4. Though the case was heard on 26.7.2016 that is almost about two years from the date of framing of the charge i.e., the order under challenge in the present case but neither of the parties brought it to the notice of this Court that the trial in the instant case has already progressed substantially and the case has reached at its fag end. While this Court was deciding the matter it thought it fit for verifying the status of the case and on verification it has been revealed that the case is already in its fag end stage of the trial

inasmuch as out of total 19 witnesses cited by the prosecution 14 witnesses have already been examined till 17.8.2016 and five witnesses are remained to be examined of which also one of the witness has expired and the matter is now fixed for the remaining prosecution evidence before the Trial Court on 13.10.2016 and 14.10.2016.

5. In view of this, it is obvious that the case is progressing at a very fast pace and there is all likelihood of early disposal of the trial itself. In view of the fact that the case already travelled quite a distance in the Trial Court and it has reached the stage of culmination, it would not be proper at this juncture to go into the merits of the case and re-appreciate the contents of the charge-sheet as also the statements recorded during the course of the investigation so as to give a finding of fact which in a trial which had already progressed and all the important witnesses have already been examined before the Trial Court.

6. The Hon'ble Supreme Court in the case of Inspector of Police, CBI Vs. B. Raja Gopal and Others reported in (2002) 9 SCC 533 in paragraphs-2 & 4 has held as under:

“2. When a trial was in progress and reached almost the penultimate stage the High Court stepped in and quashed the criminal proceedings. The aggrieved State has come up with this appeal. The case involved offences under Sections 420, 468 and 471 IPC etc., on the allegation that Canara Bank was defrauded. One of the premises adopted by the High Court was that there was a compromise between the bank officials and the accused and the disputed amount found due from the accused had been paid later. Even assuming that the said stand of the accused is correct, that was not enough for quashing the criminal proceedings. Perhaps that would have been a ground for pleading mitigation at the final stage.

4. Nonetheless, we are of the view that the premature quashment made by the High Court is not in accordance with law. We, therefore, allow this appeal and set aside the impugned judgment.”

Further in the case of State of Orissa and Anr. v. Saroj Kumar Sahoo reported in (2005) 13 SCC 540 the Supreme Court in paragraph-8 has held as under:

“8. Exercise of power under Section 482 of the Cr.P.C. in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the court possessed before the enactment of the Cr.P.C. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Cr.P.C., (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse.”

7. Thus, at this juncture, when 14 out of 19 witnesses have been examined and from the remaining 5 one has died it would not be proper for this Court to exercise its revisional jurisdiction at this belated stage of trial when the Trial Court itself has reached at a stage where the case is about to come to its logical conclusion.

8. Thus, for the foregoing reasons this Court is refraining from entertaining into the merits of the case and disposes of the present Criminal Revision with a direction to the trial Court to try to decide the case itself as expeditiously as possible.

Sd/-

(P. Sam Koshy)
Judge