

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1170 of 2016

1. Gopal Kedia S/o Kishan Kedia Aged About 69 Years R/o - 2/531, Choubey Colony, Thana Saraswati Nagar, Raipur, Tahsil & District Raipur Chhattisgarh

---- Petitioner

Versus

1. Yogendra Kumar Agrawal S/o Suresh Kumar Agrawal Aged About 34 Years R/o 108, K. N. Complex, Nemichand Gali, Ganjpara, Thana Ganj, Raipur, Tahsil & District Raipur Chhattisgarh Present Address E - 427, Santa Colony, Raipur, Tahsil & District Raipur Chhattisgarh
2. Ramesh Dhruv S/o Mohan Lal Dhruv R/o Lodhi Para, Thana Ganj, Raipur Chhattisgarh
3. Santosh Dhruv S/o Shyam Lal Dhruv R/o Lodhi Para, Thana Ganj, Raipur Chhattisgarh
4. State Of Chhattisgarh Through The Collector, Collectorate Office, Raipur Chhattisgarh

---- Respondents

For Petitioner:	Shri Sachin Singh Rajput, Advocate
For Respondent No.4:	Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

24/10/2016

1. The petitioner has filed this petition under Section 482 Cr.P.C. impugning the order dated 20.9.2016 passed by the 8th Additional Sessions Judge, Raipur in Criminal Revision No.478/2015 affirming the order dated 29.10.2015 passed by the Judicial Magistrate First Class, Raipur in Criminal Complaint Case No.1080/06 whereby the trial Judge has rejected the applications as filed by the petitioner under Sections 311, 91 & 244 (2) Cr.P.C.
2. Facts of the case, in brief, are that the petitioner filed a complaint under

Section 200 Cr.P.C. against respondents No.1 to 3 stating therein that the petitioner has purchased a plot in question from one Gokul Prasad Daga after obtaining permission from Samta Shahkari Grih Nirman Sanstha Samiti, Chirhuldih Ward, Raipur and after purchasing the said plot, the petitioner constructed a boundary wall and also installed a gate thereon. The petitioner also constructed store room over the said plot of land. It is further case of the petitioner that without giving any opportunity of hearing to the petitioner, the Samta Shahkari Grih Nirman Sanstha Samiti cancelled the sale deed executed in favour of the petitioner which was challenged before the Registrar, Co-operative Societies, Raipur. However, during the pendency of said matter, the respondents No.2 & 3 after breaking open the lock entered the said plot and demolished the construction raised by the petitioner. The police authorities refused to lodge the report on the ground that dispute between the parties is civil in nature. On filing of such complaint, the charges have been framed.

3. During the pendency of complaint case, the petitioner moved applications under Section 311, 91 & 244 (2) Cr.P.C. for recalling witnesses namely Gopal Kedia and Shailesh Mishra, Manager of Samta Grih Nirman Samiti; for permission to file additional documents and for directing respondent No.1 to produce original sale deed dated 24.1.2014. The trial Court after hearing the parties in the matter dismissed the aforesaid applications vide order impugned. It is this order which has been assailed by the petitioner in this petition.
4. Counsel for the petitioner submits that the evidence & documents sought to be brought on record by the petitioner were necessary to arrive at a just decision and there was no delay on the part of the petitioner in moving the applications. Had these applications been allowed by the trial Court, no prejudice would have been caused to the respondents.

5. On the other hand, counsel appearing on behalf of the State has supported the impugned order.
6. I have heard counsel for the parties and perused the material on record.
7. From the material available on record it is apparent that while dismissing the application under Section 311 Cr.P.C. the trial Court has held that recall of witnesses merely by alleging that the previous counsel was not competent cannot be permitted as allowing it would amount to the petitioner being permitted to fill-in lacunas in his case. Similarly, while rejecting the application under Section 91 Cr.P.C. the trial Court has held that the prayer to this effect should have been made by the petitioner at the time of recording of his evidence if he was of the view that it is an important document but no such request was made by applicant at that point of time and therefore it appears that by making the present application the only motive of the applicant is just to delay the trial which is at the verge of completion. The trial Court has also rejected the application under Section 244 (2) Cr.P.C. on the ground that despite there being opportunity for summoning the documents, no application has been filed by the applicant nor did he offer any explanation as to the non-production of documents earlier. The aforesaid findings of the trial Court have been affirmed by the revisional court by the impugned order.
8. Thus, the impugned order does not manifestly show any illegality and accordingly, the petition being devoid of any substance is liable to be dismissed and it is dismissed as such.

Sd/-

(Pritiner Diwkaer)
Judge