

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 979 of 2016

- Ishwar Dewangan S/o Daya Prasad Dewangan Aged About 49 Years R/o Naya Risad, B A L C O, District Korba, Civil & Revenue District Korba, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The Police Station- Assistant District Excise Officer, Korba, Chhattisgarh.

---- Respondent

For Petitioner	Mr. Shailendra Dubey, Advocate
For Respondent /State	Mr. Arun Sao, Dy. AG

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

26/10/2016

1. Heard.
2. This Revision Application is directed against the order passed by the trial Court on 28.09.2016 rejecting the applicant's application under Section 311 of Cr.PC for recalling the IO – PL Nayak for cross-examination.
3. The applicant is facing trial for committing offence under Section 20(B)(II)C of the NDPS Act, 1985 in the Court of Special Judge (NDPS), Korba.
4. On an earlier occasion, the applicant's right to cross-

examine the IO was closed on 04.11.2015, where-against, Criminal Revision No.1097 of 2015 was preferred before this Court, which was allowed and the applicant was granted opportunity to cross-examine the IO. At the same time, the trial Court was granted liberty to close the applicant's right of cross-examination if he fails to cross-examine the witness on the date fixed by the trial Court. The order sheets of the trial Court would reveal that on 30.06.2016, the trial was fixed for appearance of the accused. On 07.07.2016, it was fixed for recording prosecution evidence. On the said date, witness Krishni Dewangan was examined and discharged and the summons issued to the IO Shri P.L. Nayak remained unserved. The next date of 21.07.2016 was again fixed for appearance of the accused and thereafter, it was fixed on 29.07.2016 for prosecution witness, however, once again, the summons issued to the IO P.L. Nayak was not received back served or unserved. On 12.08.2016, the trial was again posted for appearance of the accused and thereafter, on 28.03.2016, it was fixed for prosecution witness, however, once again the summons could not be served on the said IO.

5. On the date in question i.e. 07.09.2016, the IO was present, however, the applicant's Senior Counsel stationed at Bilaspur failed to attend the hearing at Korba on account of death of his maternal Uncle. Although this fact was not informed to the Court but is mentioned in the application

under Section 311 of Cr.PC.

6. Be that as it may, prayer for recall has been sought on the ground that the Senior Counsel had personal difficulty in the matter to attend the hearing at Korba as he had gone to attend the rituals concerning the death of his maternal uncle.
7. It is not that the High Court vide its order dated 12.01.2016 passed in Criminal Revision No. 1097 of 2015 had mandated the trial Court to close the applicant's evidence if he fails to examine the witness, but liberty was granted to the trial Court to close his right of cross-examination if he fails to do so.
8. When liberty is granted, it is always done to achieve the ends of justice so that depending upon the facts and circumstances of the case, the trial Court would exercise its judicial discretion either to close the evidence or if adequate reasons are shown, to grant opportunity.
9. Since death is in nobody's hands, in such eventuality, Senior Counsel sought adjournment, as he had to rush to his maternal uncle's home on account of his death, it was a reasonable and adequate cause shown in the application to recall the witness.
10. For the foregoing, this Court is satisfied that case has been made out in favour of the applicant for recalling the IO -PL

Nayak for his cross-examination.

11. Accordingly, the trial Court is directed to recall the said witness and ensure recording of his cross-examination in the month of November, 2016 itself. It is made clear that if the applicant fails to cross-examine the IO on the next date of hearing, his right to cross-examine the IO shall stand closed and is not left with the discretion of the trial Court.

12. The trial Court shall conclude the trial within an outer limit of 03 months.

13. The Criminal Revision is allowed in the manner indicated above.

Sd/-

Judge

(Prashant Kumar Mishra)

Shyna