

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 1051 of 2016**

- Radheyshyam Kesharwani @ Lallu S/o Late Ram Bharose Kesharwani Aged About 63 Years R/o Sanjay Nagar Tikrapara Raipur, District Raipur, Chhattisgarh.

---- **Petitioner**

**Versus**

1. Premlal Kesharwani S/o Chandrabhan R/o Sanjay Nagar Tikrapara Raipur, District Raipur, Chhattisgarh.
2. The State Of Chhattisgarh Through The Station House Officer, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- **Respondent**

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| For Petitioner       | : | Shri P.P. Sahu, Advocate.       |
| For Respondent/State | : | Shri Adil Minhaj, Panel Lawyer. |

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**Hon'ble Shri Justice Pritinker Diwaker**

**Order On Board**

**20/12/2016**

Challenge in the present revision is to the order dated 6.8.2016 (in the memo of revision wrongly mentioned as 5.8.2016) passed by 9th Additional Sessions Judge, Raipur in Case No.29/08 whereby the Court below has partly allowed the application (Annexure P/6) as filed by the petitioner and fixed the case for cross-examination of the witnesses.

02. Brief facts of the case are that on 27.11.2001 a complaint case was filed by the petitioner before the Judicial Magistrate First Class praying that as respondent No.1 has committed offence under Sections 307, 341, 294 and 506B of IPC, he be tried in accordance with law. Statements of the complainant and his witnesses were recorded under

Section 200 of Cr.P.C., however, as the offence was triable by Sessions Court, the matter was committed to the Court of Session. Unfortunately, the Sessions Judge directed for recording statements of the witnesses before charge and number of witnesses were examined and cross-examined. When this mistake came to the knowledge of the incumbent Presiding Officer, she immediately stopped further proceedings related to examination of witnesses before charge and fixed the matter for arguments before charge vide order dated 30.6.2010. Subsequently, on 9.7.2010 charges were framed by the Sessions Court against respondent No.1 under Sections 341, 294, 506 Part-II and 307 of IPC. The Sessions Court has further directed the Government Advocate to submit trial programme and accordingly directions were made to issue summons to the witnesses as per trial programme.

03. Before the trial could proceed, the petitioner/complainant filed an application dated 12.7.2010 requesting the Sessions Court that once before framing of charge all the witnesses have already been examined and cross-examined, no further examination of these witnesses is necessary and their evidence be read as it is in the trial. According to the petitioner, it is only the remaining witnesses who have to be examined and cross-examined during trial.

04. Vide impugned order dated 6.8.2016 the Sessions Judge has partly allowed the said application as filed by the petitioner and directed that examination-in-chief of those witnesses recorded before charge shall remain as it is and they will only be cross-examined for the purpose of trial and as regards those witnesses whose examination-in-chief has

not been done till date, the same would be done and they will be cross-examined accordingly. It is this order which has been assailed by the petitioner in this petition.

05. Counsel for the petitioner submits that after examination and cross-examination of the witnesses before charge, no purpose would be served in again subjecting them to cross-examination. He submits that it would amount to giving an opportunity to these witnesses to fulfill the lacuna, which may have been there in their evidence. He submits that there is no provision in the Code of Criminal Procedure for examination or cross-examination of the witnesses in sessions trial on second occasion.

06. On the other hand, while assisting the Court it has been argued by the State counsel that trial has to proceed as per provisions of Chapter-XVIII of Code of Criminal Procedure and once the charges have been framed vide order dated 9.7.2010, the trial Judge has to proceed afresh, irrespective of the examination-in-chief or cross-examination of the witnesses done earlier before framing of charge and their evidence has to be recorded afresh. He submits that the trial Court has erred in law in accepting the examination-in-chief of the witnesses as it is and directing only their cross-examination. It has been submitted that in fact the present would be a *de novo* trial from the state of framing of charge.

07. Heard learned counsel for the parties and perused the material available on record.

08. Admittedly, vide order dated 9.7.2010 the Additional Sessions

Judge has framed the charge against the accused under Sections 341, 294, 506 Part-II and 307 of IPC and directed the government advocate to submit trial programme. Thereafter, instead of proceeding with the trial by summoning the witnesses, the trial Judge kept on waiting for about six years and on the application filed by the petitioner has passed the order impugned dated 6.8.2016.

09. It is a settled position of law that trial has to take place as per the procedure prescribed under the Code of Criminal Procedure and the Courts cannot deviate from the same. Once the Sessions Court has framed charges against the accused, it was under the obligation to proceed as per Chapter-XVIII of Cr.P.C. The Sessions Court having held the procedure adopted by the predecessor to be not in accordance with law was under an obligation to record examination-in-chief of the witnesses afresh and then to give opportunity to the counsel for the accused to cross-examine them. The trial Court of its own cannot decide that examination-in-chief of the witnesses done earlier will remain as it is and they will be only cross-examined by the defence. The order of the Sessions Court whereby it has rejected the submission of the petitioner not to allow further examination of the witnesses, whose examination-in-chief and cross-examination before charge have already been done, is correct to this extent but it has erred in law in directing that examination-in-chief of those witnesses will not be done but only their cross-examination will be permitted. The trial Court has completely ignored the provisions of law.

10. It is relevant to mention here that order dated 9.7.2010 passed by the Sessions Court framing charge against the accused was

unsuccessfully assailed by the accused before this Court by filing criminal revision (Cr.Rev.No.430/11, Premlal Kesharwani Vs. Radheshyam Kesharwani and another) and this Court has dismissed the said revision by order dated 27.7.2011.

11. Thus, considering the facts and circumstances of the case, the settled procedure of law, the order impugned is modified to the extent that the Sessions Court shall record evidence of the witnesses of the petitioner afresh and will give due opportunity to respondent No.1 to cross-examine them. The petitioner shall immediately give notice for examination of his witnesses and the Sessions Court shall thereafter proceed in accordance with law. It is unfortunate that the complaint is pending since 2010 and till date the case has not been decided.

12. Sessions Court is directed to conclude the trial as expeditiously as possible, preferably within six months from the date of receipt of copy of this Order. The Court below, if required, will give short dates to the parties for early disposal of the case.

13. Registry is directed to immediately send a copy of this order to the concerned trial Court as also to the District Judge for ensuring compliance of this order.

14. The revision is, accordingly, disposed of.

Sd/

**(Pritinker Diwaker)**

**Judge**