

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 909 of 2017

1. Dildar Hussain S/o Hayat Hussain, Aged About 38 Years R/o Shardapur, Police Station Chalgali, Police Station Shankargarh District- Surguja, Chhattisgarh.
2. Samsuddin Ansari, S/o Jakira Ansari, Aged About 30 Years R/o Bhagwatpur, Police Station, Shankargarh, District Surguja Chhattisgarh.
3. Jakira Ansari (Died)
4. Smt. Prabha Ajiji W/o Samsuddin Ansari, Aged About 33 Years R/o Bhagwatpur, Post Durgapur, Police Station Shankargarh, District Surguja, Chhattisgarh.
5. Jagdish Viswakarma, S/o Mandual Vishwakarma, Aged About 45 Years R/o Bhagwatpur, Post Durgapur, Police Station Shankargarh, District Surguja, Chhattisgarh.

---- Petitioners

Versus

- State Of Chhattisgarh Through: Station House Officer, Police Station Shankargarh District Surguja, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri Satish Chandra Verma, Advocate.
For State/respondent	:	Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

26/07/2017

Heard.

1. Learned counsel for the petitioners submits that petitioners are facing trial in Special Sessions Case No.40/2010 before the Court of Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,

Ambilapur, Surguja, Chhattisgarh for charges under Sections 147, 148, 149, 294, 506B, 323, 34, 307, 324 and 302 of Indian Penal Code (for short of 'IPC') and also Sections 25 and 27 of Arms Act along with Section 3(1)(X) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

2. It is submitted that the prosecution has completed its evidence. Learned counsel for the petitioners/accused persons proposed to examine doctors from Apollo Hospital, Bilaspur and Ram Krishna Care Hospital, Raipur. The trial Court has by the impugned order dated 6.7.2017, assumed that doctors mentioned by name would never appear before the Court and rejected the application of the petitioners, for calling the doctors as witnesses for defence. Hence, this petition has been brought challenging the impugned order with a prayer to direct the Court below for allowing the examination of doctors named in the application in defence of the petitioner/accused persons.
3. Learned counsel for the State has opposed the petition and the arguments submitted on behalf of the petitioners.
4. Perused the impugned order, the Court below has come to this conclusion, firstly, witnesses are highly placed and would never be available for examination before the Court, and secondly, it was also observed that the doctors named as witnesses for defence, do not seem to be connected with the case under trial. When the person accused of any offence is afforded opportunity for adducing evidence, this such opportunity has to be provided in meaningful manner. It has to be looked into that a person to be called as witness even though highly placed if is not under any privilege can be called by the Court and examined. The assumption made by the trial Court that the proposed witnesses for defence do not seem to be connected with the case, is not a proper observation. Hence, for these reasons this petition deserves to be allowed.
5. In view of the above observations, the petition is allowed at the motion stage. The order impugned is hereby set aside. The trial Court is directed to afford the opportunity to the petitioners for calling the witnesses named in the list of witnesses. As informed that the proceeding in trial is at the final stage. Hence, it is directed that the examination of defence witnesses may be concluded as early as possible preferably within a period of two months from the date of receipt of this order.

6. With the aforesaid observation, this petition stands disposed off.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE

Nisha