

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1416 OF 2016

Ramesh Kumar Chaubey, S/o Late Murlidhar Chaubey, aged about 65 years, R/o Village Gharghoda, Tahsil & P.S. Gharghoda, District Raigarh, Civil and Revenue District Raigarh (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through District Magistrate, Raigarh, District Raigarh (C.G.)

2. Jyotish Kumar Mahant, S/o Shri Adbad Das Mahant, aged about 40 years, R/o Sethinagar, Raigarh, P.S. Chakradhar Nagar, Raigarh, Tahsil and District Raigarh (C.G.)

... Respondents

For Petitioner	:	Mr. M.K. Sinha, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/01/2017

1. At the outset, Counsel for the Petitioner submits that he makes a limited prayer by way of the present petition for recalling the order passed by this Court in Criminal Misc. Petition No. 1283 of 2016 on 24.11.2016 and for restoration of the said Criminal Misc. Petition for rehearing.

2. Counsel for the Petitioner submits that it is a case where certain vital facts could not be brought to the notice of this Court at the time of arguments though the ground was raised by the Counsel for the Petitioner in his petition. The vital ground is that present Petitioner was not arrayed as a party before the learned Additional Sessions Judge whose order was under challenge in the Criminal Misc. Petition where the learned Additional Sessions Judge had allowed the revision petition preferred by Respondent No.2 ordering for impleading the present Petitioner also as an accused in the said case. This, according to the Counsel for the Petitioner, was an error apparent on the face of record which could not be brought to the

notice of this Court at the first instance and thus prays for recalling of the order dated 24.11.2016.

3. Counsel for the State submits that she has no objection in case, if the order dated 24.11.2016 is recalled and the Criminal Misc. Petition No. 1283 of 2016 is heard on its own merits again.

4. Taking into consideration the submissions made by the Counsel for the parties and on perusal of the record, what clearly reflects from the finding of the Court below is the fact that initially an application under Section 319 was moved by Respondent No.2 in Criminal Case No. 279 of 2002 before the Judicial Magistrate First Class, Gharghoda where the Respondent No.2 is being tried for the offence under Section 409 of IPC and the said application was rejected on 26.3.2016. Against the said rejection order of the Judicial Magistrate First Class, the Respondent No.2 preferred a revision petition, i.e., Criminal Revision No. 79 of 2016. However, in the said revision petition, the present Petitioner was neither made a party nor was he given an opportunity of hearing and the Court below, i.e., the Second Additional Sessions Judge, allowed the application in the absence of the present Petitioner. This Court finds it to be a vital fact which could not be brought to the notice of this Court during the course of hearing of the earlier Criminal Misc. Petition and does require a hearing. This Court is therefore of the opinion that a strong case has been made out by the Petitioner seeking for review/recalling of the order dated 24.11.2016 passed in Criminal Misc. Petition No. 1283 of 2016.

5. For the aforesaid reasons, the present Criminal Misc. Petition is allowed and the order dated 24.11.2016 passed in Criminal Misc. Petition 1283 of 2016 stands recalled. It is ordered that the Criminal Misc. Petition

No. 1283 of 2016 is restored for rehearing and shall be listed for further hearing on 18.1.2017.

6. Let the records of the present Criminal Misc. Petition be tagged along with the Criminal Misc. Petition No. 1283 of 2016 for hearing on 18.1.2017.

7. With the aforesaid observations, the present Criminal Misc. Petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

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