

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 171 of 2014**

State of Chhattisgarh, Through : District Magistrate,
Baikunthpur, Koriya (C.G.)

---- Petitioner

Versus

Samaylal Vishwakarma, S/o- Kaleshwar, Aged about – 59
years, R/o- Village Nagar Rjwaripara, P.S. Charcha, Distt.
Koriya (C.G.)

..... Accused

---- Respondent

And**Cr.M.P. No. 172 of 2014**

State of Chhattisgarh, Through : District Magistrate,
Baikunthpur, Koriya (C.G.)

---- Petitioner

Versus

Kamlesh Harijan, S/o Shambhu Ram Harijan, Aged about
-32 years, R/o- Dungarkholi Jagatpur, P.S. Charcha, Distt.
Koriya (C.G.)

---- Respondent

For Petitioner: Mr. Prasoon Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/05/2017**

(1) The common question involved in both the writ petition is that whether learned trial Court is justified in securing presence of sanctioning authority to prove the order of sanction.

(2) Learned counsel appearing for the petitioner would submit that such a course is wholly impermissible in law.

(3) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(4) In the matter of **Union of India Vs. M/s. Orient Engg. & Commercial Co. Ltd. And another**¹, their Lordships of the Supreme Court have clearly held that the Authority taking decision cannot be summoned to explain how he arrived at his decision and observed as under:-

“**2**.....Indeed, it will be very embarrassing and, in many cases, objectionable if every quasi-judicial authority or tribunal were put to the necessity of getting into the witness box and testify as to what weighed in his mind in reaching his verdict. We agree with the observation of Walsh, A.C.J., in *Khub Lal v. Bishambhar Sahai*² where the learned Judge has pointed out that the slightest attempt to get to the materials of his decision, to get back to his mind and to explain him as to why and how he arrived at a particular decision should be immediately and ruthlessly excluded as undesirable.

3. We should expect application of mind of the Registrar to the particular facts to be established by a witness before the coercive process of the Court is used.”

(5) Following the ratio of law laid down by the Supreme Court in the matter of M/s Orient Engg. & Commercial Co. Ltd (supra), the facts & circumstances of the case, this court is of the opinion that order passed by the trial Court summoning of witness to explain how he arrived at his decision is not sustainable in law and, therefore, the same is liable to be and is hereby set aside.

¹ (1978) 1 SCC 10

² AIR 1925 All 103

(6) Accordingly, the criminal misc. petitions are allowed to the extent indicated hereinabove. However, prosecution will prove the order granting sanction, if not proved, in accordance with law. If the trial Court has not concluded the trial, it is expected to be concluded expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

(Sanjay K. Agrawal)
Judge

D/-