

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 287 of 2017**

1. Ku. Reena Nikunj D/o Madan Lal Nikunj Aged About 21 Years R/o Chandani Chowk, Mayapur, Ambikapur, District Surguja, Chhattisgarh.
2. Ku. Neetu Nikunj D/o Madan Lal Nikunj Aged About 19 Years R/o Chandani Chowk, Mayapur, Ambikapur, District Surguja, Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Kotwali Ambikapur, District Surguja, Chhattisgarh.

----Non-applicant

For Applicants:

Ms. Hamida Siddiqui, Advocate

For State :

Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17.03.2017**

1. The challenge in the present Revision Petition is the order dated 23.02.2017 passed by the Additional Sessions Judge (F.T.C.) in Sessions Trial No. 195/2008. The present Applicants are facing trial for the offence under Section 304/34 of the Indian Penal Code. In the instant case vide the impugned order the Court below has rejected the application filed by the present applicants under Section 91 of the Cr.P.C.
2. The brief facts of the case is that the present Applicants were prosecuted for the offence in the said case and the matter is under trial before the Court below since the year 2008 onwards. An application under Section 91 of the Cr.P.C. was filed by the

present Applicants on 28.01.2015 for calling certain documents with regard to Section 162 Cr.P.C. statement recorded by the Investigating Officer, PW/7 after the death of the deceased.

3. According to the Applicants in the cross examination the Investigating Officer on 08.01.2010 has accepted the fact that the statement recorded under Section 162 of the Cr.P.C. of the witnesses has not been made part of the charge sheet. As such some of the material documents are suppressed by the prosecution from the trial. therefore it amounts to denial of fair trial which is a matter of right to the accused persons in a criminal case.
4. She relies upon the judgment of the Rajasthan High Court in case of **Dhananjay Kumar Singh v. State of Rajasthan** reported in **2006 CRI. L.J. 3873**.
5. Taking into consideration the submissions putforth by the Counsel for the Applicants and on perusal of the record, indisputably the trial against the Applicants has been initiated in the year 2008. All the witnesses of the prosecution were examined as early as in the year 2010. The statement of the Investigating Officer was recored on 08.01.2010. On which date the said witness was also extensively cross-examined and discharged. It is only after more than 5 years that the application under Section 91 of the Cr.P.C. has been filed seeking for calling of the documents i.e. the statement of the witnesses recorded under Section 162 of the Cr.P.C. No satisfactory explanation has been given by the Applicants for not filing the said application during the intervening 5 years' period. It is not the case where the present Applicants

were not aware of the facts of the cross-examination more particularly the averments made in the cross-examination itself. At this stage when the statement under Section 313 of the Cr.P.C. has already been recorded and the matter has now been fixed for final argument, the Applicants have moved application under Section 91 of the Cr.P.C. on 28.01.2015. It is also contended that the prosecution in the instant case has not opposed the application under Section 91 of the Cr.P.C. therefore the Court below should have allowed the application.

6. So far as the judgment cited by the Applicants is concerned in paragraph 36 of the said judgment, the Supreme Court has very emphatically held that in case the Court finds the application is vague or has been moved with the ulterior motive of prolonging the trial, it should reject the application. The Court has power to perform balancing act in interest of an individual as well as of the society.
7. In the instant case if we look into the conduct and manner also the time at which the application has been filed, this Court has no hesitation in reaching to the conclusion that the said application had been initiated at very belated stage and that no explanation whatsoever has been given for not moving such application immediately after the statement of the Investigating Officer was recorded about 5 years back.
8. Taking into consideration the facts and circumstances of the case, this Court does not find any strong case for exercising revisional power conferred upon this Court under Section 397 read with 401 of the Cr.P.C.. The judgment relied upon by the

Applicants is also hence distinguishable on its facts.

9. Accordingly the present Revision Petition being devoid of merits stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE

kishore