

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.64 of 2018

Ku. Malti Loniya, D/o Dukhiram Loniya, age 30 years, R/o Village Ghutku, P.S. Koni, District Bilaspur, Chhattisgarh

---- Applicant

versus

1. State of Chhattisgarh through Police Station Chakarbhatha, District Bilaspur, Chhattisgarh
2. Chhotu Loniya, S/o Love Kumar Loniya, aged 24 years,
3. Rajat Loniya @ Tingu, S/o Love Kumar Loniya, aged 19 years,
Res. No.2 and 3 are R/o Village Ghutku, P.S. Koni, District Bilaspur, Chhattisgarh
4. Upendra Shukla, S/o Basant Shukla, aged 29 years, R/o Village Mendra, P.S. Chakarbhatha
5. Chiranjit Kumar Mandal @ Deva, R/o Chamanlal Mandal, R/o Village Sikmitola, District Katihar, Bihar

--- Respondents

For Applicant	:	Shri V.C. Ottalwar, Advocate
For State/Respondent No.1	:	Shri Satish Gupta, Govt. Advocate
For Respondents No.2 to 5	:	None

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

31.7.2018

1. The instant revision has been preferred by the accused against the order dated 15.12.2017 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Bilaspur in Sessions Trial No.48 of 2015, whereby the application filed by the prosecution under Sections 91 and 311 of the Code of Criminal Procedure has been allowed.
2. A trial, being Sessions Trial No.48 of 2015 is going on against the Applicant/accused and other co-accused persons under Sections

302, 459, 120B and 34 of the Indian Penal Code. After examination of the witnesses, the case was fixed for 8.12.2017 for final arguments. On 8.12.2017, an application under Sections 91 and 311 of the Code of Criminal Procedure was moved by the prosecution seeking permission to produce the documents relating to call details of the mobile number which was used in commission of the offence in question. In the application, the documents were prayed for taking on record and permission was also sought to mark them as exhibits. The application has been allowed by the Trial Court vide the impugned order dated 15.12.2017 and the prosecution has been directed to file a list of witnesses to whom the prosecution wants to examine for the purpose of proving the said documents.

3. Learned Counsel appearing for the Applicant/accused submits that while passing the impugned order, the Trial Court failed to see that just only to fill up the lacuna the prosecution moved the application and wanted to file the additional documents of the investigation, which has caused prejudice to the Applicant/accused. The Trial Court has further failed to see that leading of evidence in the case has already been over and the case has been fixed for final arguments and, therefore, the Trial Court ought to have rejected the said application of the prosecution. He further submits that after filing of the charge-sheet, concerned police officials conducted a further inquiry into the case without taking prior permission from the Court by moving an application under Section 173(8) of the Code of Criminal Procedure and this has caused prejudice to the Applicant.

4. Learned Counsel appearing for the State/Respondent No.1 supports the impugned order passed by the Trial Court and submits that at the time of filing charge-sheet, it was mentioned therein itself that particulars and call details of the sim which was seized from the Applicant/accused are yet to be taken out and on receipt thereof, the same will be filed later on under the provisions contained in Section 173(8) of the Code of Criminal Procedure. He further submits that the call details and other related documents were obtained in the month of December, 2017 and thereafter they were submitted before the Trial Court. He further submits that during cross-examination of the Investigating Officer also, the defence had put some questions regarding conversation on the mobile phone, therefore, this fact was within the knowledge of the accused persons from the beginning. Therefore, no prejudice is caused to the present Applicant/accused or the other co-accused persons.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. Though the documents were filed at the stage of final arguments, from perusal of the charge-sheet itself it is clear that it was mentioned therein that particulars and call details of the mobile sim which was seized from the Applicant will be submitted later on. The documents were obtained in the month of December, 2017 and thereafter the same were submitted before the Trial Court. Therefore, this fact was within the knowledge of the Applicant/accused from the beginning. In these circumstances, no prejudice is caused to the Applicant. On being called the

witnesses for examination, the Applicant/accused will have ample opportunity to cross-examine them.

7. I do not see any illegality in the impugned order. It does not call for any interference by this Court. The revision has no merit. It is accordingly dismissed.
8. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary action.

Sd/-
(Arvind Singh Chandel)
Judge