

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 58 of 2018**

- Kailash Khedia S/o Shri Chhunnilal Khedia, Aged About 61 Years R/o In Front Of Vimal Shri Talkies, Manendragarh, Police Station- Manendragarh, District Korea Chhattisgarh, Chhattisgarh

---- **Petitioner****Versus**

- State Of Chhattisgarh Through S H O Police Station- Manendragarh, District Korea Chhattisgarh, Chhattisgarh

---- **Respondent**

For Petitioner	:	Shri V.A. Goverdhan, Advocate
For Respondent-State	:	Shri Ashish Shukla, Dy. AG for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/01/2018**

1. Heard.
2. The instant petition is against the order dated 12.12.2017, whereby the application to call the witness in a defense has been dismissed by the trial Court.
3. Learned counsel for the petitioner would submit that the petitioner is facing a prosecution under Sections 325, 333, 356 & 506-B of the I.P.C. and Sections 145 & 146 of the Railway Act. It is contended that the trial commenced in the year 1999 and the prosecution has closed its evidence on 14.09.2017. Thereafter, on 29.10.2017 the statement of the accused was recorded under Section 313 of the Cr.P.C. and the case was fixed for defense witness on 28.10.2017, wherein the accused/petitioner has prayed for to examine a witness who had conducted the enquiry at the relevant time

on behalf of the crime branch and found that the petitioner was infact not present at the relevant time of incident. He would further submit that the trial Court has allowed that application and the summons when were issued to the then Investigating Officer, who had conducted the enquiry was found to be dead. He would further submit that at the relevant time another identification pared was carried out by the then Tehsildar, Manendragarh Shri A.D. Shrivastava, who is now presently posted as S.D.O., Rewa (M.P.), and in such identification pared, the applicant/petitioner was not identified. It is contended that in facts of case though the said prayer to call the witness was ought to be allowed but the said application was dismissed by holding that since there is a special direction given by the High Court to decide the case expeditiously and the application has been filed only to protract the trial, the same was dismissed. He would further submit that the reason assigned cannot be the ground for rejection of a relevant evidence as the statement of Shri A.D. Shrivastava would be relevant, who had conducted the identification pared, as per Annexure P-3. It is further stated that the petitioner was never identified in such identification pared, however, the witnesses have stated the presence of the petitioner while the incident happened. So in order to prove the innocence of the petitioner in facts of the case, evidence of Shri A.D. Shrivastava would be necessary.

4. Examined the petition and the relevant documents. Perusal of Annexure P-3, which is a Test Identification Pared paper shows that with respect to crime the test identification was carried out. One of the document, which is produced as Annexure P-2 dated 18.01.1999, in such document at para 15 it makes a reference of T.I.P. in presence of A.K. Satpathi & Amit Das Chatterjee. It appears that certain identification was carried out after the incident by the Crime Branch, Bilaspur. The report also shows that after taking permission from the S.D.M., A.D. Shrivastava had conducted the TIP.

The petitioner has prayed to examine the then Tehsildar, who had conducted the TIP on the date. It is stated that he is now posted as S.D.O. Rewa, therefore, without the intervention of the Court, his presence as a witness cannot be procured. The fact that earlier witness to whom summons were issued to prove the investigation report of same crime was reported to be dead. Therefore, in facts of this case it appears only the remaining witness, who was part of the investigation carried out by crime branch and participated in conducting T.I.P. has been prayed to be called.

5. Taking into consideration the facts of this case, it appears that no prejudice would be caused to the prosecution if one opportunity of evidence is given to the petitioner to summon the then Tehsildar, A.D. Shrivastava, who conducted the TIP as a part of investigation carried out by crime branch. Considering the statement made at the bar, presently A.D. Shrivastava is posted as S.D.O., Rewa, the petitioner is directed to deposit an amount of Rs.15000/- before the Court for the expenses of the traveling and the other expenses to be paid to the witness on his appearance. It is directed that the summons may be issued to the witness in terms of Section 243 Cr.P.C. to advance the cause of justice on merits. It is further directed that only the defense shall be entitled to examine Shri A.D. Shrivastava, to whom they want to examine as defense witness and no unnecessary adjournments shall be given the case and the trial Court is also directed to decide the case within a further period of 45 days from today.

6. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu