

HIGH COURT OF CHHATTISGARH, BILASPUR
Criminal Revision No. 37 of 2009

Hinchha Ram S/o. Ganpat Gond, Aged about 40 years, R/o. Gram
Sinthola, Police Station and Tahsil Gariyaband, District Raipur (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh through District Magistrate, Raipur
District Raipur (C.G.)
2. Jethu Ram S/o. Khetu Ram Halba, Aged about 44 years,
3. Nyadhik Ram, S/o. Nammu Ram Rawat, Aged about 53 years,
4. Nawal Ram S/o. Itwari Halba, Aged about 40 years,
5. Jhari Ram S/o. Bhukhau Ram Halba, Aged about 65 years,
6. Kumari Bai, W/o. Madhu Nai, Aged about 45 years,
7. Lekin Bai, W/o. Guharit Ram Gond, Aged about 40 years,
8. Satwa Bai, W/o. Mangal Ram Halba, Aged about 50 years,
9. Derha Ram S/o. Bihari Satnami, Aged about 65 years,
10. Tulas Ram S/o. Banthu Ram Satnami, Aged about 35 years,
11. Parana W/o. Dilip Gond, Aged about 40 years,
12. Bishantin Bai, W/o. Sewak Ram Dhruv, Aged about 45 years,

Non-applicant Nos. 2 to 12, all resident of Gram Sinthola, Police
Station and Tahsil Gariyaband, District Raipur (C.G.)

---- Respondents

For the Applicant : Mr. Maneesh Sharma, Advocate
For Respondent Nos. 2 to 12 : Mr. Shivendu Pandya, Advocate
For the respondent No. 1 : Mr. Gary Mukhopadhyay, G. A

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board.

09. 10.2018

1. This revision petition has been filed against the order dated 30.12.2008 passed by the Additional Sessions Judge, Gariyband, District Raipur (C.G.) in Sessions Trial No. 41 of 2008, discharging the accused/applicants under Section 436 IPC.
2. Case of the prosecution, in brief, is that on 18.05.2008 on the date of incident the victim had gone to Sirpur for some personal work and as his wife was alone in the house, taking advantage of the same, the respondents his house on fire.
3. The applicant filed a complaint case against the accused persons before the Court of Judicial Magistrate First Class, Gariyaband. After recording the evidence of the all the witnesses, Judicial Magistrate First Class, Gariyaband in turn committed the case to the Court of Sessions Judge, Gariyaband on 8.10.2008. Thereafter, the Sessions Judge directed for registration of the case and sent information in this regard to the State Government through District Magistrate, Raipur and fixed the case for hearing on 25.10.2008.
4. On 25.10.2008, Additional Public Prosecutor appeared on behalf of the State Government and the matter was fixed for hearing for framing the charge on 4.11.2008. On the said date, the Sessions Judge directed the complainant to remain present with his witnesses for recording of evidence on charge and fixed the case for hearing on 26.11.2008. On 26.11.2008 no witnesses were

present and the case was adjourned for 30.12.2008 as a last opportunity for recording the evidence. Again, on 30.12.2008 neither the complainant nor any of his witnesses appeared for recording the evidence on charge, therefore, the Sessions Judge closed the matter and discharged the accused persons under Section 436 IPC.

5. Counsel for the applicant submits that the Court below has acted in complete contravention of the procedure laid down in chapter XVIII for CRPC. He submits that the order impugned is *per se illegal* and contrary to law. He further submits that a grave crime of fire raising was committed by the accused persons causing a heavy loss to the complainant.

6. Counsel for the respondent No.1/State, as well as counsel for the respondent Nos. 2 to 12 formally oppose the application.

7. Heard the counsel for the parties and perused the order impugned passed by the Sessions court as also the material available on record.

8. The record goes to show that when the case was fixed for charge on 04.11.2008 the complainant was duly represented by his counsel. Thereafter, the case was adjourned for 26.11.2008 and on that date also there was due representation of the complainant though his witnesses did not turn up. On 26.11.2008 the case was directed to be fixed for evidence on 30.12.2008 as a last chance to the complainant to keep his witnesses ready for examination on that date but the witnesses were absent. Thus, it appears that only on one occasion i.e. on the last date fixed as 30.12.2008 the

complainant could not appear along with his witnesses for the purposes of evidence on charge. Since it was a state case after being committed by learned Magistrate, the Court of Sessions was obliged to give sufficient opportunity to the complainant to produce his witnesses and such a hurried step resulting in discharge of the accused is not a good approach on the part of the Court below depriving the complainant to put forth his stand before the Court. By taking such an abrupt step the Sessions Court was not justified in exonerating the accused without giving proper latitude to the complainant. Such a hot haste approach by the Court below results in defeat of justice and therefore, should not be resorted to.

9. Being so, the order impugned closing the right of the complainant to adduce evidence and discharging the respondents/ accused is hereby set aside and the case is remanded to the concerned Court for being proceeded with afresh after giving the opportunity to the parties according to law. Order accordingly.

10. On case being remanded, the concerned Session Judge shall made an endeavor to conclude the case as early as possible preferably within a period of three months from the first date so fixed by it. Thereafter, the parties are expected to render full cooperation to the concerned Court by ensuring proper appearance on each date fixed for the said purpose.

11. Revision thus allowed.

Sd/-
(Vimla Singh Kapoor)
JUDGE