

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2021 of 2018**

- Om Prakash S/o Shri Sukhdas Dahariya Aged About 27 Years R/o Village Saoloni, P. S. Rajbahar, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Station House Officer, P. S. Mandir Hasuad, District Raipur Chhattisgarh
2. Ku. Sapna Gupta D/o Shri Uday Narayan Gupta Aged About 22 Years R/o Sherikhedi, Police Station Mandir Hasuad District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Shri D.N.Prajapati, Advocate
For State	:	Shri Anand Dadariya, Govt. Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****28/09/2018**

Heard on admission.

This petition, under Section 482 CrPC, is preferred against order dated 03/11/2017 and 25/11/2017 passed by the learned Trial Court.

2. Learned counsel for the petitioner argued that the impugned order has resulted in grave prejudice and miscarriage of justice in as much as the petitioner who is facing trial for alleged commission of offences under Section 354-A and 354-D of IPC has been denied opportunity to cross examine the most important prosecution witness namely the prosecutrix herself. It is submitted that on 03/11/2017, though the case was fixed for recording evidence of the prosecutrix, the senior counsel who was to appear for the appellant / accused could not remain present as he had to attend funeral. Therefore, on account of this unavoidable circumstance, adjournment was sought which was refused

by the learned Trial Court. Relying upon several authorities of the Supreme Court in the case of **Rajaram Prasad Yadav v. State of Bihar and anr., 2013 AIR SCW 4179**, **Chamandas v. State of C.G. and anr., 2014 (3) CGLJ 275**, **Ratanlal v. Prahlad Jat and ors, 2017 (9) SCC 340** and **State (NCT of Delhi) v. Shiv Kumar Yadav and anr., 2016 (2) SCC 402**, learned counsel for the petitioner would urge before this Court that atleast one opportunity may be granted for cross examination of the prosecutrix.

3. This Court found that repeated opportunities were granted. Reading of impugned order dated 25/11/2017 shows that after framing of charges, case was fixed for recording evidence of the prosecutrix on 07/09/2017. On that day, the Court work was suspended because of condolence meeting held by the bar association. The case was again directed to be listed on 07/10/2017. On that day, again the prosecutrix remained present for her examination but adjournment was sought on the ground that senior advocate is not available. The Court granted adjournment, though with reluctance only on the condition that on the next date of hearing, whether or not senior counsel appears, witness would be examined. Further date was fixed as per convenience of the counsel on 03/11/2017. On that day, again the prosecutrix remained present for her examination, but then, it was stated that the senior counsel has proceeded to attend some funeral and again adjournment was sought. Upon this, the learned Trial Court found that adjournment was granted on the proposed date on the condition that whether or not the senior counsel appears, the evidence would be recorded and thus, the petitioner had sufficient time to engage a counsel. Therefore, the case was not adjourned. Though the party was represented through counsel, right of cross examination was waived, witness was examined and released. On the next date of hearing, an application was moved under Section 311 CrPC was moved for recall of the witness which was rejected by the learned Trial Court giving rise to this petition.

It is thus clear that ample repeated opportunities were granted to the petitioner but adjournments on mere askance has been taken for granted. From order dated

07/10/2017, it is clear that adjournment was given on the condition that whether or not senior counsel appears, adjournment will not be given and the witness would be examined.

It cannot be lost sight of, the witness is none other than the prosecutrix herself. Because of adjournment sought on one ground or the other, the prosecutrix had to appear to depose before the Trial Court on three occasions, firstly on 07/09/2017, secondly on 07/10/2017 and thirdly on 03/11/2017. On 03/11/2017, the petitioner and his counsel fully knowing as per the order passed on previous dates, further adjournment will not be granted and the witness would be examined, even then, no alternative arrangements were made, which only shows that adjournment is being sought to protract the trial to ensure that somehow examination of the prosecutrix is delayed.

4. An accused facing trial is entitled to due and proper opportunity of hearing. It, however, does not mean that the accused is entitled as of right for number of adjournments. Once it is found that the accused have been granted ample opportunities which he has failed to avail without any justification, adjournment of the case would amount to conducting trial at the convenience of the accused. Moreover, it is found that the prosecutrix, the alleged victim of outraging her modesty, has already been subjected to insult and agony of appearing in the Court on three occasions. For all those reasons, this Court does not find that by rejecting petitioner's application, any miscarriage of justice has been caused. More so, when the offences for which the petitioner has been tried is not punishable with death or life imprisonment. Therefore, no interference is warranted. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge