

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1045 of 2018

1. Chhannu Lal Sahu, S/o Gaya Ram Sahu, aged about 28 years,
2. Kamlesh Sahu, S/o Gaya Ram Sahu, aged about 25 years,
3. Gaya Ram Sahu, S/o Bhikham Ram Sahu, at present aged about 58 years,
4. Avan Kumar Sahu, S/o Gaya Ram Sahu, aged about 21 years,
5. Smt. Dayawati Bai, W/o Gaya Ram Sahu, aged about 45 years,

All Applicants are R/o Tanki Madhoda in front of P.S. Newai in the house of Gayaram Sahu, District Durg, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through P.S. Newai, District Durg, Chhattisgarh

--- Respondent

For Applicants	:	Shri Vivek Sharma, Advocate
For Respondent	:	Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

27.9.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. Vide order dated 6.9.2018, the Additional Sessions Judge (FTC), Durg has rejected the application under Section 311 of the Cr.P.C. submitted by the Applicants/accused on the ground that the application has been submitted belatedly after a period of two years.
3. Learned Counsel appearing for the Applicants/accused submits that a trial under Section 304B of the IPC is going on against the

Applicants/accused in Case No.79 of 2010. He further submits that on 6.10.2016, Smt. Rukhmani (PW9) was examined before the Trial Court. In her statement, she has deposed that she possesses one letter of deceased Mamta. He also submits that one letter (Ex.D2) allegedly written by deceased Mamta has been submitted by the defence before the Trial Court. Since Smt. Rukhmani (PW9) has deposed that she recognises the handwriting of the deceased and she also possesses one letter of the deceased, Smt. Rukhmani (PW9) is the witness who can only disclose that the letter (Ex.D2) was written by the deceased or not. Therefore, further cross-examination of Smt. Rukhmani (PW9) on this point by the Applicants/accused is essential. Though there was a delay of two years in filing the application under Section 311 of the Cr.P.C., the case is of heinous nature and only on the ground of delay the application cannot be rejected. Therefore, he prays for an opportunity for further cross-examination of Smt. Rukhmani (PW9) on the above-stated point.

4. Learned Counsel appearing for the State/Respondent opposes the arguments advanced on behalf of the Applicants and supports the impugned order.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. The Trial Court has rejected the application under Section 311 of the Cr.P.C. only on the ground of delay of two years in filing the application. Since Smt. Rukhmani (PW9) has admitted the fact that she recognises the handwriting of the deceased, whether the letter (Ex.D2) is in handwriting of the deceased or not can be

disclosed by Smt. Rukhmani (PW9) only. Hence, the Applicants/accused deserve to be afforded an opportunity to further cross-examine Smt. Rukhmani (PW9) on the above-stated point.

7. Therefore, the Trial Court is directed to call Smt. Rukhmani (PW9) and afford an opportunity to the Applicants/accused to further cross-examine her on the only point as sought above by the Applicants/accused. The Applicants/accused shall bear the cost of Smt. Rukhmani (PW9) for her appearance before the Trial Court for the purpose of her cross-examination.
8. In the result, the revision is allowed in the aforesaid terms.

Sd/-

(Arvind Singh Chandel)
JUDGE