

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 619 of 2009

- Satish Sablok

---- Applicant

Versus

- State Of Chhattisgarh

---- Respondent

Post for pronouncement of the order on 19.11.2019

**Sd/-
JUDGE**

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 19.08.2019

Order Delivered on : 19.11.2019

CRR No. 619 of 2009

- Satish Sablok, S/o CP Sablok, Aged about 45 years, Shailendra Vihar, Napier Town, Jabalpur, Tahsil and District Jabalpur MP

---- Applicant

Versus

- State Of Chhattisgarh, Through Station House Officer, PS Kotwali, Raigarh, Tahsil and District Raigarh CG

---- Respondent

For Applicant	: Shri Anumen Shrivastava, Adv.
For Respondent/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey

C A V Order

19.11.2019

Present revision arises out of the impugned order dated 29.09.09 passed by the Additional Sessions Judge (FTC), Raigarh in S.T. No. 75/2003 whereby the learned Sessions Judge has allowed the application filed by the prosecutrix Asha Pahwa, wife of the deceased under Section 65 of the Evidence Act and for taking the photocopy of some of the documents as secondary evidence, on record.

2. Brief facts of the case are that deceased Vipin Kishore Pahwa, who was working as Director under the applicant's company, committed suicide by consuming some poisonous substance in the

intervening night of 15/16.07.1998. It is alleged that due to harassment and threat given by the applicant and two other co-accused, he committed suicide. Applicant is facing trial under Section 306 IPC before the trial court for the suicide committed by Vipin Kishore Pahwa. Charges were framed against the applicant under Section 306 IPC and after examination of 10 witnesses, prosecution and wife of the deceased filed application under Section 65 of the Evidence Act for taking some documents on record which were the xerox copies seized from the spot wherein the accusation of abetment of suicide was made against the applicant and two others.

3. Learned trial court by order dated 29.09.09 allowed the application of the prosecution and permitted for secondary evidence of some of the documents which were the xerox copies. Hence, the present revision filed by the applicant.

4. Counsel for the applicant submits that the order impugned passed by the learned trial court is contrary to law, facts and circumstances of the case. He submits that the trial court has erred in law by travelling beyond the allegation under Section 65 of the Evidence Act and the said provision does not apply to this case. He submits that the trial court has seriously erred in passing the impugned order which would seriously effect the applicant. He submits that the trial court has failed to appreciate that the prosecution has failed to establish the loss or destruction of the original documents and that there was no necessary receipt of secondary evidence. He has further submitted that the trial court has failed to notice that the prosecution has failed to exhaust all the sources and means in search

of original documents and therefore also there was no occasion for receipt of secondary evidence. In the present case, Clause (c) of Section 65 of the Evidence Act has not been satisfied and is improper and contrary to the established judicial proceedings and legal principles. He has placed his reliance in the matter of **Smt. J. Yashoda Vs. Smt. K. Shobha Rani (AIR 2007 SC 1721)**; **The Roman Catholic Mission Vs. State of Madras and Another (AIR 1966 SC 1457)**; **Amrita Devi and Others Vs. Sripat Rai and Others, AIR 1962 Allahabad 111**; **Aher Rama Gova and Others Vs. State of Gujarat, AIR 1979 SC 1567**.

5. On the other hand, counsel for the State supported the impugned judgement and placed his reliance in the matter of **Marwari Kumhar And Ors Vs Bhagwanpuri Guru Ganeshpuri And Others, AIR 2000 SC 2629**.

6. Heard counsel for the parties and perused the material available on record.

7. It is clear from the seizure memo dated 02.08.1998 that the four letters which were seized from the spot and xerox copy of the same provided to Asha Pahwa (wife of the deceased), were alleged to have written by the deceased. It is also clear from the order sheets that some letters were illegible as they were eaten/destroyed by termites. Wife of the deceased filed some documents along with application under Section 65 of the Evidence Act and the prosecution prayed for secondary evidence of these documents. Learned trial court has given a finding in detail that the original documents were eaten/destroyed by termites and the xerox copies were provided to the wife of the

deceased at the time of seizure and allowed the application filed by the prosecution. Thus, it is clear from the documents that the four letters were in the full knowledge of the applicant and the seizure memo was prepared by the Investigating Officer and original letters were seized from Asha Pahwa, wife of the deceased but they were destroyed by termites. Section 65 (c) of the Evidence Act provides that secondary evidence is permitted to be given for the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of original being first accounted for in such a manner as to bring it without one or the other of the cases provided for in the Section. Section 65 (c) in the The Indian Evidence Act, 1872 reads as under:

"(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time."

8. The matter is still pending for prosecution evidence and applicant has fair chances to cross-examine the witnesses and also in relation to the documents are only taken on record and the admissibility of said documents is yet to be decided. In the light of **V.C. Shukla Vs. State through CBI, 1980 AIR 962,**

(c) The term "interlocutory order" used in Section 397(2) of the Code relates to various stages of the trial, namely inquiry, trial or any other proceeding. The object seems to be to cut down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. Having regard to the very large ambit and range of the Code the expression interlocutory order would have to be given a broad meaning so as to achieve the object of the Code without disturbing or interfering with the fairness of the trial. [392 A-C]"

It may be mentioned here that in the Codes of Criminal Procedure, prior to the Code of 1973, the word 'interlocutory order' was not used at all and, therefore, it has to be interpreted for the first time only after the Code came into force. Section 397 (2) of the Code which contains the powers of revision against interlocutory orders runs thus:

"(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

It will be important to note that the word 'interlocutory order' used in this sub-section relates to various stages of the trial? namely, appeal, inquiry, trial or any other proceeding. The object seems to be to cutdown the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of Criminal Procedure, 1973 is concerned, it has got a wide and diverse area of jurisdiction inasmuch as it regulates the procedure of trial not only of the large number of offences contained in the Indian Penal Code but also in other Acts and

statutes which apply the Code of Criminal Procedure or which are statutes in pari material the Code. Having regard, therefore, to the very large ambit and range of the Code, the expression 'interlocutory order' would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial. Fortunately, however, there are a few decisions which have interpreted the expression 'interlocutory order' as appearing in Section 397 (2) of the Code. Before we come to the decisions, certain features may be noticed here. In the first place, the concept of appeal against interlocutory order seems to be by and large foreign to the scheme of the Code or for that matter the scheme of the b Code of Criminal Procedure right from 1872 upto date. Appeal has been provided only against final orders and not against interlocutory orders. Instead of appeal, the Code of 1898 as also the Code of 1872 contained powers of revision which vested in the High Court to revise any order passed by a criminal court. In the previous Codes, the term 'interlocutory' was not used. Therefore, the revisional jurisdiction was wide enough to embrace within its scope any order whether interlocutory, intermediate or final. Socondly, by virtue of scores of decisions of the various High Courts in India and the Privy Council, it was well settled that the revisional jurisdiction possessed by the Sessions Judge and the High Court could be exercised only to examine the legality or propriety of the order impugned and more particularly the Courts; were to interfere only if there was an error of law or procedure.”

9. In view of the above, this Court finds that the order impugned dated 29.09.09 does not call for any interference. Revision has no merits and the same deserves to be dismissed. However, liberty is granted to the

applicant to put his grievances before the trial court at the time of final hearing.

Records be sent to the trial court concerned forthwith, to decide the matter as early as possible in accordance with law.

Sd/-

(Rajani Dubey)
Judge

Suguna