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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.781 of 2018

Order Reserved on : 24.10.2018

Order Passed on : 14.1.2019

Shanti Lal Kankariya, son of late Pabudanji Kankariya, aged about 64 years, R/o Shivpara, Durg, Tahsil and District Durg, Chhattisgarh

---- Applicant

versus

1. State of Chhattisgarh through Station House Officer, Police Station Bhatapara (Town), District Balodabazar-Bhatapara, Chhattisgarh
2. Nitish Kumar, son of Ashok Ostwal (Jain), aged about 38 years, R/o Sadar Ward/Shankar Ward, Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh

--- Respondents

For Applicant	:	Shri Ganesh Burman, Advocate
For Respondent No.1/State	:	Shri Sangharsh Pandey, Dy. Govt. Advocate
For Respondent No.2	:	Shri Varun Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred by the Complainant against the order dated 8.6.2018 passed by the Additional Sessions Judge, Bhatapara in Sessions Trial No.H-05/2015, whereby the Additional Sessions Judge has rejected the application preferred by the Complainant/Applicant with regard to marking exhibit on the documents submitted by the Complainant and also rejected the prayer made with regard to calling the original report dated 21.1.2015 made by the Complainant to the Superintendent of Police, Balodabazar.
2. Facts of the case, in brief, are that the Complainant/Applicant is

father of injured Soma Ostwal. Respondent No.2 is husband of Soma Ostwal. Their marriage was solemnised on 30.4.2002. Allegedly, after the marriage, Soma Ostwal was subjected to cruelty and harassment by Respondent No.2 and his family members for demand of dowry. It was further alleged that on 14.1.2015, Respondent No.2 assaulted Soma Ostwal and attempted to commit her murder. On 14.1.2015 itself, First Information Report was lodged by the Complainant/Applicant. On the basis of FIR, offence under Sections 498A, 323 and 307 of the Indian Penal Code was registered and on completion of investigation, a charge-sheet was filed. The Trial Court framed charges and statement of the Complainant/Applicant was recorded during trial on 9.5.2018. Thereafter, on 9.5.2018, an application was filed by the Applicant stating that on 21.1.2015, he had made a detailed written report to the Superintendent of Police, Balodabazar. In the application, he prayed for marking exhibits on copy of the said written report dated 21.1.2015 and copy of its acknowledgment. The application was rejected by the impugned order dated 8.6.2018 on the ground that both the documents are not part of the charge-sheet and original thereof are not available, therefore, photo copies cannot be exhibited. On 7.6.2018, a separate application was filed by the Complainant/Applicant making a prayer that the original report dated 21.1.2015 be called from the police and placed on the record of the case. This prayer was also rejected by the Additional Sessions Judge vide the impugned order dated 8.6.2018 on the ground that the Complainant/Applicant filed the said application through his private Counsel directly and he himself is trying to conduct the trial. It was further observed by the Trial Court that sufficient material is

available on record to prove the case of the prosecution and in future if need arise the prosecution can file an application for calling the original report dated 21.1.2015 made by the Applicant to the Superintendent of Police, Balodabazar.

3. Learned Counsel appearing for the Applicant submitted that the impugned order dated 8.6.2018 suffers from perversity and illegality and is, therefore, not sustainable in the eyes of law. The Trial Court has committed an illegality by not allowing the application filed by the Applicant. The impugned order passed by the Trial Court is improper and illegal and is, therefore, liable to be set aside.
4. Learned Counsel appearing for the State/Respondent No.1 opposed the above arguments. He submitted that the offence has been registered on the basis of the complaint made by the Applicant dated 14.1.2015, whereas the detailed report dated 21.1.2015 was sent by the Applicant to the Superintendent of Police, Balodabazar which is irrelevant because the statement of the Applicant was already recorded by the Trial Court on 9.5.2018. Since the report dated 21.1.2015 and acknowledgment of the said report are not available on record in original, the Trial Court has rightly rejected the prayer made for exhibiting the photo copies of the said documents. It is further submitted that prior to passing of the impugned order, the Additional Sessions Judge had heard both the parties and after hearing the parties, the Additional Sessions Judge has not found any relevant or important fact based on which the applications of the Applicant could be allowed and, therefore, the impugned order has been passed rejecting the applications of

the Applicant.

5. Learned Counsel appearing for Respondent No.2 also opposed the contentions put-forth on behalf of the Complainant/Applicant.
6. I have heard Learned Counsel appearing for the parties and perused the material available minutely.
7. It is not in dispute that initially the offence was registered on the complaint made by the Applicant on 14.1.2015 and on the basis of said complaint, after investigation, charge-sheet has been filed and trial is going on. It is also not in dispute that on 21.1.2015, a detailed written report was sent by the Complainant/Applicant to the Superintendent of Police, Balodabazar. Since original report dated 21.1.2015 and original acknowledgment of the said report were not annexed with the charge-sheet, the Additional Sessions Judge has rightly rejected the application of the Applicant for marking exhibits on photo copies of the report dated 21.1.2015 and the acknowledgment of the said report.
8. Another prayer made by the Complainant/Applicant that the original report dated 21.1.2015 sent by him to the Superintendent of Police, Balodabazar be called and placed on the record of the case has been rejected by the Trial Court on the ground that the Complainant/Applicant by filing the application through his private Counsel directly was himself trying to conduct the case of the prosecution. The documents cited by the Applicant for placing on record of the case were actually required by the Trial Court for just trial of the case, no finding has been given by the Trial Court in this regard. At this juncture, this Court finds it worth mentioning that no

matter how noble intention of the Complainant and his Counsel is, it overrides the responsibility of the State to prosecute the guilty and take the case to a logical conclusion. The State holds and enjoys this position under law. Mere submission that the conducting prosecutor refused to comply with the wishes of the Complainant/Applicant assisted by a private Counsel of his choice is not sufficient to dispose of the matter in hand. In a situation like this, the Trial Court cannot be a mere spectator. It is the paramount duty of the Trial Court to see that there is a free and fair trial in the case in hand. The Trial Court ought to have focused on the subject matter of the application moved by the Complainant/Applicant and should have contemplated on the issue whether the said documents which were sought to be brought on record have any bearing of the case or not and also the conducting prosecutor should have been engaged into.

9. Therefore, having considered the above facts and circumstances of the case, the Trial Court is directed to consider the necessity of the documents required by the Complainant/Applicant in the manner as discussed above irrespective of the stage of the trial.
10. As a result, the impugned order dated 8.6.2018 is set aside and the instant revision is allowed in the aforesaid terms.

Sd/-

(Arvind Singh Chandel)
JUDGE