

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.435 of 2015

Veer Rajendra Rajput, S/o Shri Madan Lal Rajput, aged about 50 years, R/o Sector 8, Road No.32, Qr. No.2C, Bhilai, Permanent Resident LIG 46, Padamnabhpur, District Durg, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, Durg, District Durg, Chhattisgarh

--- Respondent

For Applicant	:	Shri Suresh Kumar Verma, Advocate
For Respondent	:	Shri Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.1.2019

1. Vide judgment dated 1.10.2013 passed in Criminal Case No.592 of 2013, the Judicial Magistrate First Class, Durg acquitted the Applicant/accused of the charges framed under Sections 498A and 506 of the Indian Penal Code on the ground that even after affording of sufficient opportunity to the prosecution, it could not produce any of its witnesses and, therefore, no offence is made out against the Applicant. An appeal, being Criminal Appeal No.690 of 2013 was preferred against the said judgment by the State/Respondent. Vide the impugned judgment dated 10.3.2015, the Additional Sessions Judge (FTC), Durg allowed the appeal and remanded the case for re-trial. Hence, this revision by the accused/Applicant.
2. Learned Counsel appearing for the Applicant submits that the Appellate Court has failed to consider that the First Information

Report was lodged on 26.8.2005 and even after passing of about 8 years the prosecution failed to produce its witnesses before the Trial Court for examination. The Appellate Court has also failed to see that the Trial Court had afforded sufficient opportunity to the prosecution to produce its witnesses for examination and had tried its best to get the witnesses of the prosecution examined, but, despite that, the prosecution failed to produce its witnesses. Therefore, the Trial Court rightly closed the evidence of the prosecution and rightly acquitted the Applicant/accused of the charges.

3. Learned Counsel appearing for the State/Respondent opposes the arguments advanced on behalf of the Applicant and supports the impugned judgment.
4. I have heard Learned Counsel appearing for the parties and perused the records with due care.
5. From perusal of the record, it is clear that after investigation, police had submitted a charge-sheet on 23.12.2005. Charges were framed on 4.2.2008. Thereafter, the Judicial Magistrate First Class vide order dated 26.9.2013 closed the opportunity of the prosecution to adduce its evidence on the ground that sufficient opportunity had already been afforded to the prosecution, but the prosecution failed to produce its witnesses. Thereafter, vide the judgment dated 1.10.2013, the Trial Court acquitted the Applicant. The Appellate Court, vide the impugned judgment dated 10.3.2015, allowed the appeal and remanded the case only on the ground that though the Judicial Magistrate First Class had given sufficient

opportunity to the prosecution to produce its witnesses, the Magistrate did not follow the relevant provisions regarding issuance of bailable/arrest warrant for appearance of witnesses.

6. From perusal of the record of the Court of Judicial Magistrate First Class, it is clear that after framing of the charges, the case was fixed for evidence of the prosecution for 6.5.2008. Thereafter, on 19.8.2008, 23.1.2009, 8.7.2010, 9.9.2010, 16.11.2010, 10.2.2011, 7.4.2011, 25.6.2011, 9.9.2011, 17.10.2011, 19.12.2011, 6.2.2012, 9.4.2012, 11.6.2012, 3.6.2012, 24.9.2012, 3.11.2012, 3.12.2012, 23.1.2013, 18.2.2013, 8.4.2013, 27.5.2013, 5.8.2013, 3.9.2013 and finally on 26.9.2013, the case was fixed for producing witnesses of the prosecution, but the prosecution did not produce any of its witnesses on any of those dates. From the note of the concerned Court Moharrir/Clerk, which reflects on the order-sheet, it is also clear that almost on all the dates mentioned above, process were issued for production of the witnesses of the prosecution. But, neither the prosecution served the process on its witnesses nor did it return those process unserved. From the order-sheets, it also reflects that on many of the aforesaid dates, show cause notices were also issued to the concerned Station House Officer (SHO) of the police station regarding service of summons/process to the witnesses of the prosecution. From the order-sheets, it also reveals that the witnesses of the prosecution were issued process many times through the concerned Superintendent of Police also, but despite that, those process were not served. Thus, it is clear that the Trial Court, from 19.8.2008 to 26.9.2013, made efforts many times to get the witnesses of the prosecution examined, but the prosecution neither served process on its witnesses nor did it

return served or unserved process to the Trial Court. Thus, it is clear that the Trial Court has made its best efforts for getting the witnesses of the prosecution examined. In these circumstances, the observation of the Appellate Court that the Trial Court did not call for any explanation of the concerned Station House Officer with regard to service of process issued against the witnesses of the prosecution and the further observation of the Appellate Court that the Trial Court did not follow the procedure for production of the witnesses of the prosecution before the Trial Court for their examination are contrary to the material available on record.

7. Consequently, the instant revision is allowed. The judgment dated 10.3.2015 passed by the Appellate Court is set aside and the judgment dated 1.10.2013 passed by the Trial Court is affirmed.
8. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge