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HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1369 of 2019

Manas Agrawal, S/o. Jogiram Agrawal, Aged About 40 Years, R/o. Gandhi Ganj, Police Station City Kotwali, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through : District Magistrate Raigarh, Taluka Raigarh, District Raigarh, Chhattisgarh.

-----Respondent

For Petitioner	: Mr. Ratnesh Kumar Agrawal, Advocate
For Respondent/State	: Mr. Kapil Maini, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

21/11/2019

1. Challenge in this petition is to the order dated 19.09.2019, passed by the learned 7th Additional Sessions Judge, Raigarh, District – Raigarh (C.G.) in Cr.A. No.163 of 2018, whereby the application under Section 391 of Cr.P.C. filed by the petitioner is dismissed.
2. It is submitted that the petitioner was charged for commission of offence under Section 294, 506(B), 323 of the Indian Penal Code, in which the date of incident is 24.07.2011 and time is between 12 and 13 hours of the same date. Father of the petitioner had filed a complaint on 23.07.2011 in the Police Station because of which the petitioner and sons of the complainant were present in the police station at the time in which it is alleged that the incident has taken place. Therefore, the petitioner had made this prayer that he may be given an opportunity to bring evidence regarding the complaint made and the presence of the petitioner and others in the police station at the time of incident, which has been wrongly denied by the Appellate Court.

3. On perusal of the copy of the application filed under Section 391 of Cr.P.C. and other documents including the deposition of the witnesses against this petitioner in which there is some admission that sons of the complainant have been called to the police station on account of some complaint, therefore, prayer made by the petitioner had some relevance.
4. Section 391 of Cr.P.C. provides that if the Appellate Court thinks it is necessary that additional evidence is relevant for the disposal of the appeal, in that case taking of such additional evidence can be directed as provided under the provision.
5. On perusal of the impugned order, it is found that there is no finding of the Appellate Court regarding necessity of evidence which is one of the essential features of Section 391 of Cr.P.C., therefore, this petition is allowed at motion stage and the impugned order is set-aside. The Appellate Court is directed to reconsider on the application of the petitioner on the ground of necessity as mentioned in Section 391 of Cr.P.C. and pass appropriate order in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge