

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 946 of 2015

- Nathuram Jain S/o Chanduram, Aged About 60 Years R/o Village Bheerawahi, P. S. Kanker, Tehsil And District North Bastar Kanker, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Collector, North Bastar, Kanker, Chhattisgarh

--- Non-applicant

For Applicant – Mr. Raza Ali, Advocate.

For State/Non-applicant – Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

26-11-2020

Heard.

1. This criminal revision has been brought against the order dated 03.10.2015 passed by the Special Sessions Judge, Kanker, C.G., in Special Sessions Trial No.14/2012.
2. The applicant- Nathuram Jain was a witness in the above mentioned criminal case. The applicant was examined in the trial as P.W.-11. As he did not support the prosecution case, he was declared hostile by the prosecutor. The prosecution then filed an application under Section 319 of Cr.P.C. praying to array the applicant as an accused in the case, on the ground that he has deliberately made a false statement before the Court, therefore, there is material for his prosecution as an accused. The learned Special Court has by the impugned order allowed the

application and added the petitioner as an accused in the Special Criminal Case No.14/2012.

3. It is submitted by the learned counsel for the applicant that the order impugned is erroneous and against the provisions of law. On an earlier occasion, one co-accused Gulam Kudarat Ullakhan had filed an application under Section 319 of Cr.P.C. praying for prosecuting the applicant in the same case as an accused which was dismissed by the order dated 15.05.2013.
4. It is further submitted that proviso to Section 132 of Evidence Act gives exemption to any witness from being arrested or prosecuted for answering any question as a witness, also under Article 20 of Constitution of India, the petitioner has constitutional protection.
5. Reliance has been placed on the judgment of Supreme Court in the case of **R. Dinesh Kumar @ Deena Vs. State (represented by Inspector of Police & Ors.** reported in **(2015) 7 Supreme Court Cases 497**, in which the Supreme Court has held that the proviso to Section 132 of Evidence Act grants immunity to the witness in making a statement before the Court. Therefore, the impugned order is not sustainable for the reason that it is illegal prayer is made to quash the same.
6. Learned counsel for the State/respondent opposes the submissions and submits that Section 132 of Evidence Act does not give any immunity to a witness making false statement. Similarly, it is submitted that the Article 20 of the Constitution of India has wrongly been quoted in the argument by the petitioner side for the reason that this has no applicability in the present case. It is a case in which the applicant, who was a witness in the case and it was his duty to make a true statement

before the Court even then he made a choice to speak the untruth before the Court in contradiction with the previous statement given by him under Section 161 of Cr.P.C. Therefore, the learned Special Court has not committed any error in passing the impugned order. The case law cited by the petitioner side has no relevance, therefore, the present revision petition is without any substance which may be dismissed.

7. Heard learned counsel for both the parties and perused the documents present on record.
8. Considered on the submissions, the co-accused- Gulam Kudarat Ullahkhan was Branch Manager in Dena Bank, Kanker, C.G. In the year 2004-05, the petitioner had obtained a loan from Dena Bank for purchase of tractor from co-accused Raj Sharma. The prosecution case is this that one Mangiyaram Markam was falsely shown as guarantor in the loan sanctioned to the petitioner and his signature was forged in the guarantee papers. This matter was revealed when Mangiyaram Markam received notice for recovery from the bank and he made a complaint of the same. The petitioner was the beneficiary of that loan transaction in which allegedly fraud has been committed in the matter of submitting guarantee, but he was not made an accused in that case.
9. The petitioner had made statement under Section 161 of Cr.P.C. to the police that he had no knowledge that Mangiyaram Markam has been made guarantor in the loan transaction with the petitioner. The petitioner has received from that statement in the Court and stated that it was Mangiyaram Markam, who had presented himself and signed as guarantor for the loan issued to him.
10. The issue of arraying applicant as an accused was previously raised by the co-accused Gulam Kudarat Ullahkhan by filing an application which

was decided on 15.05.2013 and rejected by the trial Court and that order was not challenged in any superior Court.

11. At the time of filing of charge-sheet, the arraying of applicant as an accused was not considered by the Investigation Agency and the Special Court has also in the earlier round of passing order has dismissed the prayer for arraying the applicant as an accused. The details of the material and charge-sheet cannot be taken into consideration in the present revision petition because at present, the question is limited only to this extent, that whether the applicant can be made an accused in the case. On the ground of making the statement which was inconsistent and contradictory to the statement made by him under Section 161 of Cr.P.C.

12. The statement made by the applicant before the Court is yet to be examined by the trial Court and opinion has to be given as to he has made a true statement or a false statement. This kind of analysis and scrutiny of any statement made by witness can never be made at an earlier stage. The proper stage of drawing any such conclusion is the stage of judgment in the case. On perusal of the impugned order, it appears that the learned Special Court has in a way reviewed the earlier order passed on 15.05.2013, which is again not permissible under the provisions of Code of Criminal Procedure.

13. Hence at present, the only case is this that the respondent side has alleged that the applicant has made a false statement before the Court. Only after conclusion of trial, when the Court draws the conclusion that the applicant has deliberately made a false statement, in that case, the applicant can be prosecuted for making the deliberate false statement before the Court as per the provisions of Indian Penal Code. Therefore,

on the basis of the discussions made hereinabove, I am of this view that the impugned order is erroneous and against the provisions of law, therefore, it is not sustainable. Hence, the revision petition is allowed and the impugned order is set aside.

14. Accordingly, the revision petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika