

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**W.P.(227) No. 1067 of 2018**

Mangat Rai, S/o. Late Shri Nanda Kishore Agrawal, Aged About 76 Years,  
R/o. Lajpat Rai Nagar Khaparaganj Bilaspur, Tahsil and District Bilaspur,  
Chhattisgarh.

**---- Petitioner**

***Versus***

Nanda Kishore Budhiya, S/o. Late Shri Antulal, aged about 81 years, R/o.  
Opposite Company Garden, Tilaka Nagar Bilaspur, Tahsil and District  
Bilaspur, Chhattisgarh.

**-----Respondent**

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For Petitioner : Mr. M.D. Sharma & Mr. Pritam Tiwari,  
Advocates

For Respondent : Mr. Awadh Tripathi, Advocate

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**26/02/2020**

1. This petition has been brought being aggrieved by the order dated 24.10.2018, passed in Criminal Revision No. 242 of 2018, by the First Additional Sessions Judge, Bilaspur by dismissing the revision petition.
2. It is submitted by the counsel for the petitioner that respondent has filed an application under Section 340 of Cr.P.C., which has been registered as Miscellaneous Criminal Case No.30/2014. The respondent No.1 examined himself and his witnesses have also been examined. Thereafter, by the impugned order dated 10.05.2018, the learned Chief Judicial Magistrate has again

ordered and granted opportunity to the respondent for producing evidence. Being aggrieved by that order, revision petition No.242/2018 was preferred, which has been dismissed by the learned First Additional Sessions Judge, Bilaspur holding that revision petition has not been filed within limitation.

3. Reliance has been placed on the judgment of M.P. High Court in **State of M.P. Vs. Munshilal**, reported in **1976 M.P.L.J. 51**, **Sheikh Wahid Vs. Gokulchand & Ors**, reported in **1991 J.L.J. 688** and the judgment of Supreme Court in case of **Central Bureau of Investigation Vs. Ravi Shankar Srivastava, IAS & Anr.** reported in **2006 Cr.L.J. 4050** and it is prayed that petition be allowed and the relief be granted to the petitioner.
4. Counsel for the respondent submits that recording of evidence of the respondent is at the initial stage, therefore, the grievance raised by the petitioner before this Court is unreasonable and uncalled for, therefore, this petition be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Perused the copy of the orders in M.J.C. No.30/2014. The application under Section 340 of Cr.P.C. was filed on 23.04.2014. When the case was fixed for recording of applicant evidence. An application was filed by the respondent under Section 91 of Cr.P.C. on 11.03.2015, even then the case was posted for evidence of the applicant side on 25.03.2015. On 25.03.2015, the case was adjourned for 24.04.2015 and on that date without

mentioning the closure of the evidence of the applicant side, the statement of the non-applicant/petitioners witness was recorded. Thereafter, the parties seeking adjournment for arguing application under Section 91 of the Cr.P.C. and after huge number of such adjournment, the application was rejected on 13.02.2018. The case was fixed for recording of evidence of both the parties on 13.03.2018. On 13.03.2018, the case was adjourned for 25.04.2018 and was posted for recording of applicant's evidence. On 25.04.2018, the matter was again adjourned for 10.05.2018. On 10.05.2018, the petitioner/non-applicant filed an application under Section 151 of C.P.C. making prayer that respondent evidence is closed, therefore, he should not be given further opportunity for producing evidence, which was dismissed.

7. Perusal of the complete order sheet of the proceeding under Section 340 of Cr.P.C., it is found that there is no formal order for closure of opportunity of respondent side for producing evidence. However, the facts remains that one of the witnesses of the petitioner/non-applicants has also been examined. Therefore, the procedure has not been taken up carefully and with due diligence. The adjournments have been given in very mechanical manner. Even without the formal order of closing the respondent evidence. This fact can not be ignored that at present stage is of recording non-applicant evidence, therefore, it would have been proper for the learned Court below to allow the recording of the

non-applicants evidence first and then to have considered on the application for filing additional evidence by the respondent side. Hence, it is clear that stage of proceeding is for recording of non-applicant's evidence, hence, the impugned order and the order of the Court below both are interfered and the opportunity of the respondent for presenting evidence is kept in abeyance.

8. The learned Court of Chief Judicial Magistrate is directed to continue with the stage of recording evidence of non-applicant/petitioner side. The respondent side shall have a liberty to file application after completion of the non-applicant's evidence for presenting additional evidence if it is so required and also advised by the counsel and also looking to the long pendency of the case, it is further directed that the proceeding in Cr. M.J.C. No. 30 of 2014 be completed preferably within a period of six months from this order.
9. Accordingly, this petition is disposed off.

**Sd/-**  
**(Rajendra Chandra Singh Samant)**  
Judge