THE HIGH COURT OF MADHYA PRADESH

MCRC No.20655/2020

(BRIJESH RAI VS STATE OF MADHYA PRADESH AND ANOTHER)

Jabalpur, Dated 04.12.2020

Hearing through video conferencing.

Shri Anil Khare, learned Senior Counsel with Shri Siddharth Singh, learned counsel for the petitioner.

Shri A. Rajeshwar Rao, learned Government Advocate for the respondent No.1/EOW.

Challenge in this petition under Section 482 of the Code of Criminal Procedure, 1973, is to an order dated 12.03.2020 passed by Special Court, constituted under Prevention of Corruption Act, 1988, Bhopal in Special Case No.483/2016; whereby the trial Court has declined to accede to the prayer of the petitioner/accused person to lead further evidence.

2. The order sheets on record reveal that the prosecution closed its case on 25.01.2020 and thereafter, the matter was posted on 17.02.2020 for defence evidence. On said date i.e. 17.02.2020, the petitioner/accused was examined and was called upon to furnish the list of defence witnesses. It was, however, expressed on behalf of the accused that they don’t intend to file list of defence witnesses; instead, they would examine defence witnesses on their own. The order sheet records:

17.02.2020

...

प्रकरण अभियुक्त परीक्षण हेतु नियत है।

अभियुक्त ब्रजेश राय एवं सुदामा झाडे के धारा–313 दं0प्र0सं0 के अंतर्गत अभियुक्त परीक्षण अंकित किये गये। यह प्रकरण ऐसा नहीं है कि धारा 232 दं0प्र0सं0 के अंतर्गत कार्यवाही की जा सके। अभियुक्तगण को बचाव में प्रवेश कराया गया। अभियुक्त ब्रजेश राय एवं सुदामा झाड़े की ओर से बचाव साक्ष्य देना व्यक्त किया गया परंतु अभियुक्तगण की ओर से कोई बचाव साक्ष्य सूची प्रस्तुत नहीं की है तथा उनके द्वारा व्यक्त किया गया कि वह अपने बचाव साक्षी स्वयं उपस्थित रखेगा। अतः आगामी नियत दिनांक को अभियुक्तगण अपने–अपने बचाव साक्ष्य आवश्यक रूप से स्वयं उपस्थित रखें, बचाव साक्ष्य उपस्थित न आने की दशा में प्रकरण में बचाव का अवसर समाप्त कर अंतिम तर्क श्रवण किये जायेगे।

प्रकरण अभियुक्तगण की ओर से बचाव साक्ष्य प्रस्तुति/ अंतिम तर्क हेतु दिनांक 03/03/2020 को प्रस्तुत हो।

3. The matter was, accordingly, posted on 03.03.2020. On said date, an adjournment was sought. By way of indulgence, last opportunity was granted to the accused person to produce defence witness/evidence and the matter was posted on 12.03.2020. The order sheet dated 03.03.2020 records :

03.03.2020

राज्य द्वारा श्री आर. के खत्री सहायक जिला लोक अभियोजन अधिकारी।

आरोपी ब्रजेश राय (A-1) सहित –संदीप गुप्ता अभियुक्त । आरोपी सुदामा झाड़े (A-2) सहित श्री रजनीश बरैया।

प्रकरण अभियुक्तगण की ओर से बचाव साक्ष्य प्रस्तुति एवं अंतिम तर्क हेतु नियत है।

आरोपीगण के अधिवक्ता बचाव साक्ष्य करने हेतु समय चाहते है। समय इस निर्देश के साथ प्रदान किया जाता है कि आगामी तिथि पर आवश्यक रूप से बचाव साक्ष्य प्रस्तु करें। बचाव साक्ष्य हेतु अंतिम अवसर दिया जाता है, बचाव साक्ष्य प्रस्तुत न करने की स्थिति में बचाव साक्ष्य का अवसर समाप्त कर अंतिम तर्क श्रवण किए जाएंगे।

प्रकरण अभियुक्तगण की ओर से बचाव साक्ष्य प्रस्तुति एवं अंतिम तर्क हेतु दिनांक 12.03.2020 को पेश हो ।

4. On 12.03.2020, when the matter was taken up, two applications were filed by the accused person for summoning five defence witnesses and for staying of further proceedings.

5. Vide impugned order, the trial Court taking into consideration that despite ample opportunity being given to the accused persons, they have not produced the list of defence witnesses, rejected the same on the anvil that having given up to file the list of defence witnesses and having undertaken to produce the defence witnesses, the act on behalf of the accused person in filing the said applications was a tactic adopted by the accused person with a view to delay the trial.

6. Though it is contended on behalf of the petitioner that the trial Court committed jurisdictional error in closing the right of the petitioner/accused person to lead further evidence. However, taking into consideration the fact that despite ample opportunity being given to the petitioner, the petitioner did not file the list of

defence witnesses and instead, filed an application for staying of further proceedings, we do not perceive any jurisdictional error being committed by the trial Court in rejecting the applications for staying of further proceedings and for summoning the defence witnesses.

7. In view whereof, the petition under Section 482 of CrPC stands **dismissed**.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

vinod

Digitally signed by
VINOD VISHWAKARMA
Date: 2020.12.07
12:37:13 +05'30'