

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1278 of 2019**

Nitesh Kumar (wrongly mentioned Nitish Kumar) S/o Ashok Kumar Ostwal (Jain), Aged About 42 years, R/o Sadar Ward, Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Station House Officer, P.S. Bhatapara City, District Balodabazar-Bhatapara, Chhattisgarh.
- 2.Shantilal Kankaria S/o Late Pabudanji Kankariya, Aged about 65 years, R/o Shivpara, Durg, Tahsil and District Durg, Chhattisgarh.

--- Respondents

For Petitioner	:- Mr. Varun Sharma, Advocate
For Respondent 1/State	:- Mr. Ravi Bhagat, Dy. G.A.
For Respondent 2	:- Mr. T.K. Jha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/01/2021

- 1.The instant petition under Section 482 of CrPC is directed against the impugned order dated 06/05/2019 by which the application filed by the prosecution under Section 311 of CrPC for re-examination of victim's father namely Shantilal Kankaria has been allowed.

2. Mr. Varun Sharma, learned counsel for the petitioner, would submit that learned trial Court has gone absolutely wrong in allowing the application filed by the prosecution as those documents are inadmissible in evidence and victim's father Shantilal Kankaria has already been examined, therefore, it cannot be reopened and the impugned order deserves to be set aside.

3. Mr. Ravi Bhagat, learned State counsel, would submit that since the two documents are relevant for just and proper disposal of the criminal case, therefore, learned trial Court has directed for re-examination of Shantilal Kankaria by the impugned order in which there is no illegality warranting interference by this Court under Section 482 of CrPC.

4. I have heard learned counsel for the parties, considered their rival submissions and perused the records.

5. It is not in dispute that on the complaint made by respondent No. 2 herein, the petitioner has been charge-sheeted for offence punishable under Sections 307 and 498A of IPC and he is facing trial in which evidence of the

complainant and her father i.e. respondent No. 2 herein has already been recorded and thereafter, in the first round of litigation with regard to marking exhibit on the documents submitted by the complainant, the matter reached before this Court and this Court in Criminal Revision No. 781/2018 remitted the matter to the trial Court for considering the application dated 07/06/2018 and further considering the necessity of those documents during the course of the trial. Thereafter, prosecution also filed an application dated 02/03/2019 under Section 311 of CrPC for re-examination of victim's father Shantilal Kankaria, which has been allowed by the impugned order.

6. Learned trial Court has clearly recorded a finding that those documents are necessary for just and proper disposal of the criminal case and therefore, directed re-examination of Shantilal Kankaria in exercise of the power conferred under Section 311 of CrPC. The impugned order passed by the trial Court holding the documents to be relevant for just and proper disposal of the criminal case is a

pure and simple discretionary order which warrants no interference from this Court under Section 482 of CrPC. However, it is made clear that re-examination of Shantilal Kankaria shall be confined only upto those two documents which have subsequently been brought on record dated 21/01/2015 and 23/02/2015 and petitioner is at liberty to question the admissibility of those documents at the time of the trial in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter qua those two documents which will be decided by the trial Court absolutely on merits and that too, in accordance with law.

7. With the aforesaid observations, the instant petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet