

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 452 of 2021

Narottam Biswas, S/o. Late Nikhil Chand Biswas, aged about 44 years, R/o. Village Nehrunagar, Police Station Gandhinagar, Tahsil Ambikapur, District Surguja Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : District Magistrate Ambikapur, District Surguja Chhattisgarh.
2. Sanjeeta Biswas alias Dolly alias Kolly, D/o. Late Nirmal, W/o. Narottam Biswas, aged about 35 years, R/o. at Banaras Road Near Anushka Medical Fundurdihari, Police Station Gandhinagar Ambikapur, District Surguja Chhattisgarh.

---- Respondents

For Petitioner : Mr. Dev Ashish Biswas, Advocate

For State-Respondent : Ms. Hamida Siddiqui, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/09/2021

1. This present petition has been brought being aggrieved by the impugned order dated 06.08.2021, passed by the Court of learned Third Additional Sessions Judge, Ambikapur, District – Surguja in Criminal Appeal No.3/2020 upholding the order dated 10.12.2019, passed by the Court of Judicial Magistrate First Class, Ambikapur.
2. It is submitted that the petitioner is a non-applicant in the case, which has been filed by the respondent - Sanjeeta Biswas under Section 12 of the Protection of Women from Domestic Violence Act. The petitioner/ non-applicant filed an application praying for summoning the Halka Patwari as witness for the purpose of proving the income of the respondent No.2, which has been erroneously and arbitrarily dismissed by the Court of Judicial Magistrate First Class as well as by the appellate Court. It is submitted that the petitioner/non-applicant has

denied the opportunity to defend the case against him, therefore, the impugned order and the order of the Court below both are liable to be set-aside.

3. Learned State counsel appearing for the respondent No.1 makes formal objection.
4. Considered on the submissions. Any party to any criminal case may make a prayer for summoning a government witness and if such application is considered and allowed then the Court has the authority to issue summons for appearance of such witness according to the provisions, which are present in the Code of Criminal Procedure. The learned Court of Judicial Magistrate has observed that the government witness will not be able to depose before the Court regarding the income of respondent No.2 appears to be erroneous proposition as it is not for the Court to ponder and worry about what the witness is going to depose. Proper opportunity for defending has to be given to the parties and by refusing his prayer, the Court of Judicial Magistrate First Class and appellate Court both have committed error.
5. Hence, this petition is disposed off at motion state. The learned Court of Judicial Magistrate First Class is directed to issue notice to the concerned Patwari for appearance as witness of the petitioner in the case concerned.

Sd/-
(Rajendra Chandra Singh Samant)
Judge