

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 810 of 2014

Tulsi Prasad, S/o Late Badri Prasad, Aged About 49 Years, R/o Ward No. 19, Behind F.C.I. Warehouse, Manendragarh, District- Korea (C.G.)

---- Petitioner

Versus

1. Smt. Rani, W/o Nisar Ahmed, Aged About 47 Years.
2. Nisar Ahmed, S/o Mohd. Qurash, Aged About 50 Years.
3. Niyaz, S/o Nisar Ahmed, Aged About 28 Years.

All are R/o Ward No. 19, Near River Manendragarh, District- Korea (C.G.)

---- Respondents

For Petitioner : Mr. Shakti Raj Sinha, Advocate.

For Respondents : Mrs. Anju Ahuja, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

02.08.2021

1. The petitioner has filed this petition under Section 482 of the Cr.P.C. challenging order dated 21.08.2014 passed by Revisional Court i.e. Second Additional Sessions Judge, Manendragarh, District- Korea (C.G.) in Criminal Revision No. 78/2012 arising out of the order dated 08.11.2012 passed by Sub Divisional Magistrate, Mahendragarh, District- Korea (C.G.) in Case No. 17/2008.
2. The records of the case would reveal that earlier the Sub Divisional Magistrate, Manendragarh vide it's order dated 20.09.2012 rejected application of the petitioner filed under Section 145 of the Cr.P.C. against which the petitioner filed Criminal Revision No. 58/2008 before the learned Sessions Judge, Korea and vide it's order dated 31.01.2009, the matter was remanded back to the Sub Divisional Magistrate, Manendragarh giving opportunity to the petitioner to lead

evidence. Despite the sufficient opportunity granted to the petitioner, the petitioner has not led evidence, therefore, the Sub Divisional Magistrate, Manendragarh vide its order dated 08.11.2012 rejected the case of the petitioner. Against this, the petitioner filed Criminal Revision No. 78/2012 before Second Additional Sessions Judge, Manendragarh, which has also been rejected by recording finding that sufficient opportunity has been given to the petitioner and the petitioner is not able to utilize the same, therefore, the revision petition filed by the petitioner is dismissed.

3. Learned counsel for the petitioner would submit that he has filed some copy of order-sheet of the Sub Divisional Magistrate, Manendragarh to demonstrate that no proper opportunity of hearing has been given to the petitioner.
4. The record would show that after remand, the matter was listed on 30.08.2012 for petitioner's evidence, but the petitioner has not led evidence, therefore, the case was adjourned for 20.09.2012. On 20.09.2012, nothing has been done on the part of the petitioner and thereafter the matter was listed 27.09.2012. On 27.09.2012, the Presiding Officer was on tour, therefore, the matter was listed on 18.10.2012. On 18.10.2012 the matter was adjourned for 08.11.2012. On 08.11.2012, the petitioner was again unable to lead evidence, therefore, right of the petitioner to lead evidence was closed.
5. The record would further show that sufficient opportunity of hearing has been given to the petitioner. Opportunity of hearing can be given to the petitioner in compliance of the natural justice, therefore, the order dated 08.11.2012 passed by Sub Divisional Magistrate, Manendragarh and order dated 21.08.2014 passed by Second Additional Sessions Judge, Manendragarh, District- Korea, are quashed. The matter is remanded back to the Sub Divisional Magistrate, Manendragarh, for deciding the case of the petitioner giving opportunity of hearing to the petitioner.

6. The petitioner and the respondents are directed to appear before Sub Divisional Magistrate, Manendragarh, District- Korea on **14th September, 2021** for recording evidence. If no evidence is recorded on that date due to any unavoidable circumstances, the Sub Divisional Magistrate will give one more opportunity to the petitioner to lead evidence, thereafter, no opportunity will be given to the petitioner to lead evidence and the matter will be decided on the material placed on record. The said opportunity of hearing to lead evidence is being given to the petitioner on payment of Rs. 5000/- as cost payable to the respondents is conditions precedent and without payment of cost, the matter will not be reopened by the Sub Divisional Magistrate, Manendragarh.
7. With these observations, the instant petition stands disposed of.

Sd/-
(Narendra Kumar Vyas)
Judge