

**(Subodh Shrivastava Vs. State of M.P. & Anr.)**

**07.02.2017**

Shri P.S.Raguvanshi, counsel for the applicant.

Shri Arun Barua, Panel Lawyer for the respondent No.1/State.

With the consent of the parties, the case is heard finally.

This petition under Section 482 of Cr.P.C. has been filed against the order dated 24.08.2016 passed by JMFC, Vidisha in case No.40/2014 by which the application filed under Section 311 of Cr.P.C. for recalling Jaswant Singh and Shiv Charan was rejected.

The necessary facts for the disposal of this application are that the applicant is facing trial for offence under Section 304-A of IPC. During the course of trial, the statements of Jaswant Singh (Pw-1) and Shivcharan (Pw-2) were recorded on 22<sup>nd</sup> February, 2016. These witnesses were examined in detailed by Shri Prakash Chand Jain, the counsel who was earlier engaged by the applicant. Thereafter, an application was filed under Section 311 of Cr.P.C. on the ground that the earlier counsel of the applicant could not put certain questions to these witnesses and therefore, Jaswant Singh (Pw-1) and Shivcharan (Pw-2) be recalled for further cross-examination.

It appears that the application under Section 311 of Cr.P.C. was filed after the counsel was changed by the applicant. It is not the case of the applicant that earlier he had not engaged Shri Prakash Chand Jain. Merely, because the earlier counsel did not cross-examine the witnesses on a particular point inspite of the full opportunity given to the applicant, then that by itself would not be a ground to recall the witnesses.

The Supreme Court in the case of **State (NCT of Delhi) Vs. Shiv Kumar Yadav and another** reported in **(2016) 2 SCC 402** has held as under :-

**"29.** We may now sum up our reasons for disapproving the view of the High Court in the present case:

(i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;

(ii) No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;

(iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;

(iv) The trial court as well as the High Court rejected the reasons for recall of the witnesses;

(v) The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;

(vi) Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;

(vii) Mere change of counsel cannot be ground to recall the witnesses;

(viii) There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;

(xi) The High Court has not rejected the reasons given by the trial Court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall i.e. denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;

(x) There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted."

Thus, it is clear that neither (in)competency of a lawyer

engaged by the applicant nor the mere change of counsel can be a ground to recall the witnesses. Even otherwise, the counsel for the applicant could not point that how prejudice could be caused to the accused unless the witnesses are called.

Therefore, this Court is of the considered view that it is not a fit case for recall of the witnesses as prayed by the applicant.

Accordingly, this petition fails and is hereby **dismissed**.

**(G.S.Ahluwalia)**  
**Judge**