

THE HIGH COURT OF MADHYA PRADESH**M.Cr.C.No.367/2018****Dharmendra Jadon vs. State of M.P.****Gwalior, Dated : 17.01.2018**

Shri Amit Lahoti and Shri Brijesh Tyagi, learned counsel, for the petitioner.

Shri S.S. Dhakad, learned Public Prosecutor, for the respondent/State.

With the consent of learned counsel for the parties, the matter is heard finally at the motion stage of hearing of the case and the following order is passed:-

ORDER

1. The petitioner has filed this petition under Section 482 of the Cr.P.C. against the impugned order dated 22.12.2017 passed by the court of Special Judge (Atrocities) Vidisha in Special Sessions Case No.131/2015, whereby his application under Section 311 Cr.P.C. (for short 'the application') has been disallowed.

2. Short facts of the case for just and proper adjudication of this petition are that the petitioner has been facing trial in the said case under Sections 354, 376 and 506 of the IPC, 3 r.w. 4 of the POCSO Act and 3 (1)(xii) of the S.C. and S.T. Act before the said Court. The learned Special Judge has recorded the evidence of the prosecutrix, her mother and brother as witnesses No.PW/1 to PW/3 respectively. On 12.09.2017, the application was filed on behalf of the petitioner stating that his previous counsel had not cross-examined properly all the three witnesses

in respect of the discrepancies, inconsistencies and the contradictions appearing in their evidence. Therefore, their further re-cross examinations are necessary to secure justice from the court for him in the case. Consequently, they be recalled for further cross-examinations. The petitioner is ready to bear their expenses.

3. Having heard the arguments on the application raised by the learned counsel for the parties, the learned Special Judge dismissed the application vide the impugned order holding that a senior counsel had cross-examined all the three witnesses in detail, therefore, there is no cogent and reasonable ground exist to recall all the three witnesses for further cross-examinations.

4. Hence, this petition.

5. Learned counsel for the petitioner submits that the cross-examinations of all the three witnesses are necessary on the points of contradictions, omissions, inconsistencies and discrepancies appearing in their evidence to get justice for the petitioner otherwise he would be a victim of miscarriage of justice. He submits that the learned Special Judge dismissed the application superficially. He, therefore, prays to allow the application, setting aside the impugned order.

6. Learned Public Prosecutor submits that the trial Court had recorded the evidence of all the three witnesses in the year 2015. But, the petitioner submitted the application after the lapse of about two years without giving any convincing reason for delay of two years in filing it. In fact, during the said period the petitioner has been succeeded in winning over all

the three witnesses by the power of money or muscles or otherwise. Thereupon, the application was filed to get their versions appearing in their examination-in-chief changed. Thus, the application was filed with mala fide intention. The learned Special Judge rightly dismissed the application having found no reasonable and convincing reasons to recall all the three witnesses. Thus, no interference by this Court in exercise of power under Section 482 of the Cr.P.C. with the impugned order is warranted.

7. I have considered the rival submissions made at the bar and perused the impugned order and the material on record.

8. Hon'ble the Supreme Court in the case of State (NCT of Delhi) Vs. Shiv Kumar Yadav and Anr. [(2016) (2) SCC 402] has laid down certain parameters for recall/re-examination of a witness under the provisions of Section 311 Cr.P.C. The Supreme Court has emphasized that the recall cannot be allowed on the pleas that defence counsel (previous) was not competent and that he had not effectively cross-examined witnesses. It is also held that recall should not be a matter of course. A plea for recall for advancing justice has to be bona fide and has to be balanced carefully with other relevant consideration including uncalled for hardships to witnesses and uncalled for delay in the trial. In the case of State of Haryana Vs. Ram Mehar and others (2016 Cr.L.J.4666 SC), the Supreme Court has reiterated the same parameters and rejected the application made by the accused persons under Section 311 Cr.P.C. In a recent decision reported in

Ratanlal vs. Prahlad Jat and others, (2017) 9 SCC 340, the High Court of Rajasthan (Jaipur Bench) has allowed the application of the defence under Section 311 Cr.P.C. and permitted to recall for cross-examinations of witnesses No.PW/4 and PW/5. The order of the Rajasthan High Court was challenged by an aggrieved person before the Supreme Court which has found that the defence had not given any reasonable and convincing ground for recalling of them. Thereupon, the Supreme Court set aside the order of the Rajasthan High Court for recalling of both the witnesses. In the meantime, both the witnesses had been recalled and re-crossed in the trial Court in compliance with the order of the Rajasthan High Court. At this, the Supreme Court has directed in para 24 of its decision to the trial Court not to take into consideration the evidence of PW/4 and PW/5 recorded pursuant to the order of the High Court.

9. In the light of the propositions of law laid down in the aforesaid rulings, I would proceed to decide this petition. Upon the meticulously and minutely perusal of the application filed by the petitioner before the trial Court, I find that no convincing ground is given for recall of all the three witnesses for being cross-examined on the contradictions, omissions, inconsistencies and the discrepancies as claimed by the defence and no satisfactory explanation is given as to why the application is made near about the delay of two years after the recording of their evidence in the application. Moreover, at the time of final arguments the defence would have an opportunity to bring into the notice of the learned

Special Judge the contradictions, omissions, inconsistencies and discrepancies appearing in the evidence of all the three witnesses to impeach their trustworthiness and the learned Special Judge will certainly take into consideration the same while appreciating the prosecution evidence in a judgment to be written by him. In these facts of the case, the aforestated apprehension raised by the learned Public Prosecutor appears to be true to me.

10. It is pertinent to mention at this stage that in the course of arguments, the learned counsel for the petitioner has placed reliance upon the decision rendered by this High Court in the case of Imrat Lal vs. State of M.P., 1996(1) MPWN 202. In the light of the aforesaid three rulings of the Supreme Court, the law laid down in this case stands overruled.

11. For the aforesaid reasons and discussion, I find that this petition has no merits and substance, and the learned Special Judge rightly dismissed the application. Consequently, I disallow the petition upholding the impugned order.

12. A copy of this order be sent without delay to the Court of Special Judge (Atrocities) Vidisha for information.

13. Accordingly, this petition is finally disposed of.
Certified copy as per rules.

(Rajendra Mahajan)
Judge

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