IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 12th OF DECEMBER, 2022

MISCELLANEOUS CRIMINAL CASE NO. 47659 OF 2022

BETWEEN:-

1. SHADAB ANSARI S/O SHRI SHAJAD ANSARI AGE 25

2. SHAMSAD ANSARI S/O SHRI SHAHJAD ANSARI, AGE 24

BOTH R/O NAYAPURA, KHATIK KHANA, BHIND, DISTRICT BHIND (MADHYA PRADESH)

…..APPLICANTS

(BY SHRI DEEPENDRA SINGH KUSHWAHA - ADVOCATE)

AND

STATE OF MADHYA THROUGH THE POLICE STATION CITY KOTWALI, DISTRICT BHIND (MADHYA PRADESH)

…..RESPONDENT

(BY MS. KALPANA PARMAR – PANEL LAWYER)

This application coming on for admission this day, the Court passed the following:

ORDER

This application under Section 482 of CrPC has been filed against the order dated 23.10.2021 passed by Special Judge (POCSO Act), District

Bhind in ATR No.41/2020, by which right of the applicants to cross-examine the prosecutrix has been closed.

2. It is submitted by the counsel for the applicant that on 16.09.2021 the prosecutrix had appeared, but because of reference on account of death of an Advocate, she could not be examined. Thereafter, again she appeared on 09.10.2021, but counsel for the applicants was not ready to cross-examine her. Accordingly, case was adjourned with a stipulation that in case, if the counsel for the applicants does not cross-examine the prosecutrix on the next date of hearing, then the right of the applicant to cross-examine her shall be closed. Thereafter, it appears that on 23.10.2021 the prosecutrix appeared and her examination-in-chief was started at 12:00 PM. During recording of examination-in-chief of the prosecutrix, counsel for the applicants was present and the examination-in-chief was concluded by 12:20 PM, but Shri Neeraj Shrivastava, Advocate who was contesting the case on behalf of the applicants did not appear in spite of repeated instructions and associate counsel of Shri Neeraj Shrivastava was repeatedly insisting that the cross-examination shall be done by Shri Neeraj Shrivastava, Advocate only. At a later stage, associate counsel of Shri Neeraj Shrivastava once again appeared before the Trial Court and prayed for deferment of the cross-examination. However, no reason for the same was pointed out. Since the counsel for the applicants was not interested in cross-examining the prosecutrix, therefore, the Court closed the right of the applicants to cross-examine the prosecutrix by exercising powers under Section 309 of CrPC.

3. Challenging the order passed by the Court below, it is submitted by the counsel for the applicants that Shri Neeraj Shrivastava had appeared before the Trial Court at 16:20 on 23.10.2021 and the closure of the rights of the applicants to cross-examine the prosecutrix would cause irreparable

loss to them and, therefore, a last opportunity may be granted to cross-examine the prosecutrix.

4. *Per contra*, the application is vehemently opposed by the counsel for the State. It is submitted that the prosecutrix is minor and the applicants were trying to create all sorts of hurdles, so that her evidence may not be recorded. The applicants cannot be permitted to hijack the Court proceedings. Whenever the prosecutrix appeared before the Trial Court, every attempt was made to avoid the recording of her evidence. This is against the concept of Section 33 of the Protection of Children from Sexual Offences Act, 2012 (in short "POCSO Act") which regulates the procedure for examination of a juvenile. Section 35 of the POCSO Act provides that the evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Sessions Court and the Sessions Court shall complete the trial as far as possible within a period of one year from the date of taking cognizance of the offence. The accused cannot be permitted to harass the minor prosecutrix by adopting delaying tactics. Unfortunately, in the present case, even the counsel for the applicants got himself involved in delaying tactics.

5. It is submitted by the counsel for the applicant that in fact, the adjournment was being sought by their counsel and they had never instructed him to do so.

6. Considered the submissions made by the counsel for the applicants.

7. If the counsel for the applicants was seeking adjournment on his own contrary to their instructions, then either they should have changed their counsel or they have a right to approach the Bar Council of Madhya Pradesh for professional misconduct of their counsel, but the minor prosecutrix cannot be allowed to be harassed by the accused persons by

adopting such impermissible tactics.

8. Section 309 of CrPC reads as under:-

> "**309. Power to postpone or adjourn proceedings.**— (1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:
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> Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.]
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> (2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
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> Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
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> Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:
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> [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]
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> [Provided also that—
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> (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;
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> (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]"

9. This Court in the case of **Akash Batham & Ors. vs. Santoshi** passed in **CRR No. 380/2017** by order dated **21/4/2017** has held as under:-

"Thus, it is clear that when the witnesses are present, then the case can be adjourned only on the ground of social reasons to be recorded in writing.

From the order dated 12/04/2017, it is clear that the Trial Court, instead of closing the right of the applicants for crossexamining the witnesses, gave an opportunity to the counsel for the applicants to cross-examine the witnesses after lunch hours and instead of making preparation of the case, it appears that the counsel for the applicants straightaway made a prayer for adjournment of the case on the ground that he wants to challenge the order of the Trial Court by filing a criminal revision before the High Court and, therefore, prayed that the trial should be adjourned. Thus, it is clear that sole intention of the applicants appear to be somehow get the trial adjourned in order to avoid cross-examination of the witnesses present in the Court. If the prayer for adjournment was bonafide, then the counsel for the applicants was already granted liberty to cross-examine the witnesses after lunch hours but instead of showing any bonafide, he still persisted with his prayer for adjournment of the trial. Thus, under these circumstances, the Trial Court did not commit any mistake in drawing an inference that the sole intention of the applicants behind filing of the application for adjournment is to somehow avoid the cross-examination of the witnesses.

Under these circumstances, when the witnesses were present in the Court and the prosecutrix was examined and crossexamined by the applicants, it

> cannot be said that the application which was filed for adjournment was because of any bonafide reason. Further, there is nothing on record that the applicants have made any complaint to the Bar Council against the lawyer for refusing to cross-examine the witnesses during the Court proceedings."

10. The order passed by this Court has been affirmed by the Supreme Court in **SLP (Cri) 4464/2017** decided by order dated **30/5/2017**.

11. This Court in the case of **Kuldeep Singh Tomar vs. State of M.P.** passed in **MCRC No. 5816/2018** by order dated **08/3/2018** has held as under:-

> "Thus, it is clear that day to day proceedings in a Criminal Trial is a Rule and adjournment is an exception."

12. The Supreme Court in the case of **Vinod Kumar Vs. State of Punjab** reported in **(2015) 3 SCC 220** has held as under :

> **"3.** The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognise "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on the rule of law which includes "fair trial" for the accused as well as the prosecution?
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> **4.** In the aforesaid context, we may recapitulate a passage from *Gurnaib Singh* v. *State of Punjab*: (SCC p. 121, para 26)
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> > "*26*. … we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on

> a mere asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar* wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."

5. Be it noted, in the said case, the following passage from *Swaran Singh* v. *State of Punjab*, was reproduced: (*Gurnaib Singh case*, SCC pp. 121-22, para 28)

> "*28*. … '*36*. … It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice.'" (*Swaran Singh case* SCC p. 678, para 36.)

6. In this regard, it is also fruitful to refer to the authority in *State of U.P.* v. *Shambhu Nath Singh*, wherein this Court deprecating the practice of a Sessions Court adjourning a case in spite of the presence of the witnesses willing to be examined fully, opined thus: (*Shambhu Nath Singh case*, SCC pp. 671-72, para 9)

> "*9*. We make it abundantly clear that if a witness is present in court he must be examined on

> that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the Presiding Officers of the trial courts and it can be reformed by everyone provided the Presiding Officer concerned has a commitment towards duty." (*Gurnaib Singh case*, SCC p. 123, para 31)

57. Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish for the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts:

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for crossexamination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on

record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the crossexamination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for crossexamination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."

13. The Supreme Court in the case of **Akil Vs. State (NCT of Delhi)** reported in **(2013) 7 SCC 125** has held as under :

"35. In this context it will also be worthwhile to refer to a circular issued by the High Court of Delhi in Circular No. 1/87 dated 12-1-1987. Clause 24-A of the said circular reads as under:

"**24-A**. A disturbing trend of trial of sessions cases being adjourned, in some cases to suit convenience of counsel and in some others because the prosecution is not fully ready, has come to the notice of the High Court. Such adjournments delay disposal of sessions cases. The High Court considers it necessary to draw the attention of all the Sessions Judges and Assistant Sessions Judges once again to the following provisions of the Code of Criminal Procedure, 1973, Criminal Rules of Practice, Kerala, 1982 and Circulars and instructions on the list system issued earlier, in order to ensure the speedy disposal of sessions cases.

1. (*a*) In every enquiry or trial, the proceedings shall be held as expeditiously as possible, and, in particular, when the examination of witnesses has once begun, the same shall be continued *from day to day* until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. [Section 309(1) CrPC]

(*b*) After the commencement of the trial, if the court finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable. If witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded, in writing. [Section 309(2) CrPC]

2. Whenever more than three months have elapsed between the date of apprehension of the accused and the close of the trial in the Court of Session, an explanation of the cause of delay, (in whatever court it may have occurred) shall be furnished, while transmitting the copy of the judgment. (Rule 147, Criminal Rules of Practice)

> **3.** Sessions cases should be disposed of within six weeks of their institution, the date of commitment being taken as the date of institution in sessions cases. Cases pending for longer periods should be regarded as old cases in respect of which explanations should be furnished in the calendar statements and in the periodical returns. (High Court Circular No. 25/61 dated 26-10-1961)
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> **4.** Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed. A sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be adjourned or postponed, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date."

14. The Supreme Court in the case of **Krishnan Vs. Krishnaveni** reported in **(1997) 4 SCC 241** has held that the object behind the criminal law is to maintain law, public order, stability as also peace and progress in the society. The object of the criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The Court further proceeded to state that the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement and these malpractices need to be curbed.

15. The Supreme Court in the case of **Swaran Singh Vs. State of Punjab** reported in **(2000) 5 SCC 668** has held as under :

> "*36.* … It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted,

> he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

16. The Supreme Court in the case of **Gurnaib Singh Vs. State of Punjab** reported in **(2013) 7 SCC 108** has held as under :

> **"35.** We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same."

17. The Supreme Court in the case of **State of U.P. Vs. Shambhu Nath Singh** reported in **(2001) 4 SCC 667** has held as under :

> **"10.** Section 309 of the Code of Criminal Procedure (for short "the Code") is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:
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> > "309. *Power to postpone or adjourn proceedings*.—(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination

of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the subsection sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day

until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition,

> "provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, *except for special reasons to be recorded in writing*".
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> (emphasis supplied)

12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate

is not a "special reason" for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

15. The time-frame suggested by a three-Judge Bench of this Court in *Raj Deo Sharma* v. *State of Bihar* is partly in consideration of the legislative mandate contained in Section 309(1) of the Code. This is what the Bench said on that score: (SCC p. 516, para 16)

"*16*. The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. Section 309(1) CrPC supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day."

16. In *Raj Deo Sharma (II)* v. *State of Bihar* this Court pointed out that the trial court cannot be permitted to flout the mandate of Parliament unless the court has very cogent and strong reasons and no court has permission to adjourn examination of witnesses who are in attendance beyond the next working day. A request has been made by this Court to

> all the High Courts to remind all the trial Judges of the need to comply with Section 309 of the Code. The request is in the following terms: (SCC p. 614, para 14)
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> "*14*. We request every High Court to remind the trial Judges through a circular of the need to comply with Section 309 of the Code in letter and spirit. We also request the High Court concerned to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as the law permits."
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> 17. We believe, hopefully, that the High Courts would have issued the circular desired by the Apex Court as per the said judgment. If the insistence made by Parliament through Section 309 of the Code can be adhered to by the trial courts there is every chance of the parties cooperating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their nonexamination for days."

18. The Supreme Court in the case of **Mohd. Khalid Vs. State of W.B.** Reported in **(2002) 7 SCC 334** has held as under :

> **"54.** Before parting with the case, we may point out that the Designated Court deferred the cross-examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-inchief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. These aspects were highlighted by this Court in *State of U.P.* v. *Shambhu Nath Singh* and *N.G. Dastane* v. *Shrikant S. Shivde*. In *Shambhu Nath Singh case* this Court deprecated the practice of courts adjourning cases without examination of witnesses

when they are in attendance with the following observations: (SCC pp. 671-72, para 9)

"*9*. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of *bhatta* (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty. No sadistic pleasure, in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers, can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

55. In *N.G. Dastane case* the position was reiterated. The following observations in the said case amply demonstrate the anxiety of this Court in the matter: (SCC p.143, para 20)

"*20*. An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournments for

> postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct."

19. Thus, when the prayer for deferring the cross-examination of a witness is made with an oblique motive to defeat the basic purposes of criminal trial, then if the right of the accused is closed for cross-examining such a witness, then only the accused or his counsel are responsible for creating such an unwarranted and unpleasant situation.

20. Accordingly, looking to the conduct of the applicants and their counsel, this Court is of the considered opinion that no case is made out for interfering in the matter.

21. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Abhi