

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.1228/2015

Lakhan

Vs.

State of Madhya Pradesh

Shri Akhil Godha, learned counsel for the applicant.

Shri Romesh Dave, learned counsel for respondent/State.

ORDER

(Passed on 20/10/2015)

This Criminal Revision under section 397 r/w section 401 of Cr.P.C. is filed against the order passed by the learned 3rd Additional Sessions Judge, Indore in Sessions Trial No.721/2014 dated 25.08.2015 whereby the learned Sessions Judge has closed the right of accused for cross-examination of prosecution witnesses.

2. The facts giving rise to this criminal revision are that the present applicant is facing a trial before the learned Additional Sessions Judge under sections 148, 302, 447 of IPC & section 25(1-B)(1) & section 27(1) of Arms Act. In this case, the deceased Kamal Patel died and there is also charges of attempt

to murder of Mayabai. On 24.08.2015 the case was fixed for recording of prosecution witnesses as advocate Shri Kaushal Tiwari was busy in the High Court. The matter was taken up at 02.35 pm. Advocate Shri Vikas Daga filed Vakalatnama on behalf of the present applicant/accused Lakhan and sought one month's time for cross-examining the witnesses in attendance Mayabai and Pankaj. The matter was again taken up by the learned Additional Sessions Judge at 04.00 pm. and the application filed by Shri Vikas Daga, advocate was considered. The learned Additional Sessions Judge opined that sufficient time was given to the accused for engaging a lawyer and therefore, considering that giving further time is not called for, the learned Sessions Judge dismissed the application, however, as it was already 04.00 pm. and other advocates Shri Jai Narayan Tiwari and Shri Vaibhav Gupta were also not present, the matter was adjourned for 25.08.2015.

3. On 25.08.2015, the impugned order was passed. On this date, the cross-examination of prosecution witness Pankaj was completed by other advocates Shri J.N. Tiwari and Shri K.K. Joshi. However, when Shri Vikas Daga, advocate for the present applicant was asked to cross-examine the witness, he again filed an application stating therein that he filed an application on

24.08.2015 and sought one month's time for cross-examining the witnesses which was not granted to him and, therefore, he again prayed that the opportunity be granted to him to cross-examine the witnesses and time is granted to him for cross-examination the witnesses. The learned court proceeded to dispose of the application and opined that the witnesses were asked to remain present on 25.08.2015, while they were present on 24.08.2015 and prior to that also they were present on two earlier occasions. The learned Additional Sessions Judge opined that as the cross-examination could not be completed on 24.08.2015, the counsel for the present applicant got the opportunity to prepare for cross-examination of these two witnesses. However, he did not avail the opportunity and again seek adjournment which amounts to harassment of the witnesses and, therefore, he dismissed the application and again asked the advocate to cross-examine the witnesses which he refused and then the accused was asked to cross-examine the witnesses which he also refused and, therefore, the prosecution witness Pankaj was released.

4. Aggrieved by this order, this present revision is filed against the aforesaid order passed by the learned Additional Sessions Judge on the ground that only one occasion, time was sought by the advocate and there was a reasonable prayer which

was not allowed by the learned court. The counsel filed his Vakalatnama first time on that date and, therefore, it was necessary for him to prepare himself for cross-examining the important prosecution witnesses and, therefore, the impugned order is against the law and also it is not in interest of justice. The right of cross-examining the prosecution witness was closed which adversely affected the interest and defense of the present applicant and, therefore, it is prayed that the impugned order be set aside and the opportunity be granted to the present applicant to cross-examine the prosecution witness.

5. I have gone through the impugned order and taken into consideration the rival contention by both the counsels. In this regard the proviso appended to sub-section 2 of section 309 of Cr.P.C. which was inserted by Act 5 of 2009 may be referred to. It is now very clear that no adjournment should be granted under clause (c) of the proviso. When the pleader not present in the Court and is not ready to cross-examine the witnesses and the discretion is granted to the Court to record the statement of the witnesses and pass such order as comes fit dispensing with the examination-in-chief or cross-examination of the witnesses as the case may be. In the present case full opportunity was granted to earlier to the present applicant for engaging the lawyer and

also when such lawyer was engaged, he should come before the court prepared. Looking to the facts and circumstances of the case and taking into consideration the provisions of section 309 Cr.P.C., in my considered opinion, no case is made out for interference in the impugned order. No illegality has been committed by the learned Additional Sessions Judge and, therefore, this revision is devoid of merit and liable to be dismissed and dismissed accordingly, however, on cost of Rs.1,000/- only. The payment of cost shall be conditioned precedent for the defence of the accused and it should be deposited in the court before he is allowed to cross-examine the other prosecution witnesses.

6. With this observation and direction, this criminal revision stands disposed of.

(ALOK VERMA)
JUDGE