

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.285/2015

Sanjay Khadiwala

Vs.

State of MP

Shri Ravindra Kumar Dube, learned counsel for the applicant.
Shri Amit Singh Sisodiya, learned counsel for the respondent/State.

JUDGMENT

(Delivered on this 1st day of July, 2015)

This Criminal Revision under section 397 of Cr.P.C. is directed against the order dated 08.02.2015 passed by learned 7th Special Judge, Indore in Sessions Trial No.397/2009.

By the impugned order, learned Special Judge dismissed the application filed on behalf of the accused Sanjay and Sharad for calling a witness from the office of Sub Registrar. It was mentioned in the application that earlier, the person, who appeared alongwith the register of the office, brought wrong register from the office and, therefore, his evidence could not be recorded on that date and now by application, the accused prayed that correct record should be called for.

Learned Additional Sessions Judge referring to an order dated 08.01.2015 observed that on that date, witness Mardan Singh Rawat was present before the Court alongwith register, however, counsel for the accused Shri Markan expressed that he did not want to adduce any evidence on that document and, therefore, witness was released and on this premise, the Judge observed that assertion of the accused that on that date witness brought a wrong register before the Court was not acceptable. The Court also observed that earlier also on 29.12.2014, the witness was present but he was not examined. The applicant has filed certified copy of the order-sheet which includes the order-sheet of 29.12.2014 and 08.01.2015.

The relevant portion of the order dated 29.12.2014 is reproduced here as under:-

बचाव साक्षी मर्दनसिंह रावत रिकार्ड कीपर उपपंजीयक उपस्थित किंतु आरोपी की ओर से प्रस्तुत जानकारी सही ना होने से साक्षी संदर्भित दस्तावेज नहीं ला पाया । अतः आरोपी से उक्त साक्षी को सात सौ रुपये परिव्यय दिलाया गया ।

It appears that on 29.12.2014, the witness did not bring any document as the information was not correctly provided to him, therefore, again he appear on 08.01.2015. On this date also, it appears that he brought a wrong document. The relevant portion of the order dated 08.01.2015 reproduced here as under:-

बचाव साक्षी मर्दनसिंह रावत उपस्थित साक्षी दिनांक 23.08.03 की अगुष्टि पंजी लेकर उपस्थित लेकर बचाव अभिभाषक श्री मारकन ने व्यक्त किया कि इस दस्तावेज के संदर्भ में साक्ष्य नहीं कराना चाहता है । अतः साक्षी को सात सौ रुपये परिव्यय आज का गवाह खर्च अदा किए जाने पर

उन्मुक्त किया ।

आरोपी अभिभाषक को निर्देशित किया जाता है कि साक्ष्य में जो दस्तावेज तलब करवाना हो इस हेतु तलवाना पेश करे ।

On this date, the Court directed the accused to file PF for calling of the correct document, therefore, taking these two orders into consideration, nowhere it was mentioned in these two orders that counsel for the accused persons expressed that **now** he did not want to adduce any evidence in respect of the document.

After going through the certified copy of the order-sheet of the Court, it appears that only lapse on the part of the present applicant was that he did not file any PF and the correct information in compliance of the Court order dated 08.01.2015.

In this view of the matter, this revision is allowed. The impugned order dated 18.02.2015 is set aside. It is directed that present applicant should file necessary PF and correct information for calling the document before the Court and the Court shall examine the person appearing alongwith the document from the Officer of the Sub Registrar.

C.c as per rules.

(Alok Verma)
Judge