

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

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

CRR No.292/2015

Kunjika Construction Pvt. Ltd. and another

Vs.

Devdutt Yevale and another

Shri M.K. Jain, counsel for the applicant
Shri Rasik Sugandhi, learned counsel for the respondent No.1.

JUDGMENT

(Passed on this 5th day of May, 2015)

This Criminal Revision is directed against the order passed by learned special judge under SC/ST (Prevention of Atrocities) Act dated 23.02.2015 in Criminal Appeal No.365/2012.

The relevant facts for disposal of this revision are that two separate applications under section 391 of Cr.P.C. were filed before the learned Special Judge, dated 23.06.2014 and 25.07.2014 by the present applicant, who was the appellant before the Special Judge. These applications were pending. On 03.01.2015, another application was filed by the applicant praying thereby that two

applications under section 391 of Cr.P.C. be decided before the appeal was disposed of finally. Learned Special Judge by the impugned order dismissed the application filed on 03.01.2015 and ordered that both the applications under section 391 of Cr.P.C. and another application under section 311 of Cr.P.C. would be disposed of at the time of final disposal of the appeal after hearing final arguments of both the parties.

Aggrieved by this order, present revision is filed praying that prior to final disposal of the appeal and application under section 391 of Cr.P.C. should be disposed of so that the present applicant/appellant should get proper opportunity to adduce additional evidence or to challenge the order if the order is passed against him.

Counsel for the applicant relies upon the judgment of Division Bench of this Court in the matter of **Ram Singh vs. State of M.P.**, reported in 1993(1) M.P.W.N. 96 in which, it was held that appellate court under section 311 of Cr.P.C. has power to allow additional evidence, however, in this matter, appeal was heard finally on merit yet detailed submission of the facts was not made as the application under section 311 of Cr.P.C. was allowed for taking evidence on record.

Counsel for the respondent No.1 relies on the judgment of this Court in the matter of **Dharmendra vs. State of M.P.**, reported in 2006 (II) M.P.W.N. 47 in which, it was held that the application for taking additional evidence in appeal should be decided after hearing the appeal on merits and cannot be decided in isolation. This Court observed that after hearing the applicant, it can be ascertained whether or not additional evidence sought to be produced is necessary or not. Respondent No.1 also relies on the judgment of Hon'ble the Supreme Court in the case of **Sethuraman vs. Rajamanickam**, reported in CRA No.486-487/2009, dated 18.03.2009. In this case, it was held that the order passed under section 311 of Cr.P.C. is an interim order and revision does not lie against such order.

In the present case, so far as the impugned order is concerned, firstly, it may be seen whether revision lies against the present order or not, infact, nothing was decided by the learned Special Judge. It was only ordered that pending application under section 391 of Cr.P.C. shall be disposed of alongwith final disposal of the appeal.

In such situation, applying the principles laid down in the case of **Sethuraman** (supra), revision does not lie against the

impugned order. This apart, as held in the case of **Dharmendra** (supra), such application cannot be decided in isolation. Only when the appeal is heard finally and after taking into consideration all the facts and material on record, it can be decided whether the additional evidence which the applicant sought to adduce, is necessary or not.

Accordingly, in the present case, firstly, revision does not lie against the impugned order and secondly, on merits also, no irregularity has been committed by the learned Special Judge and as such, this revision is devoid of merits and is hereby dismissed.

C.c. as per rules.

(Alok Verma)
Judge

Kratika/-