

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.1479/2015

Lovesh & another

Vs.

State of Madhya Pradesh

O R D E R

Post for 04.09.2015

**(ALOK VERMA)
JUDGE**

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State of Madhya Pradesh

Shri Pankaj Soni, learned counsel for the applicant.

Ms. Preetha Moitra, learned counsel for the respondent/State.

O R D E R

(Passed on this 4th day of September, 2015)

This application under Section 482 Cr.P.C. is directed against the order passed by learned 5th Additional Sessions Judge, Indore in criminal revision No.1/2014 dated 28.02.2014 by which the learned Additional Sessions Judge dismissed the revision filed against order passed by learned Judicial Magistrate First Class in criminal case No.1141/2007 dated 09.07.2007.

Facts giving rise to this application are that on 09.07.2007, the learned Judicial Magistrate First Class, Indore passed an order in which, learned Judicial Magistrate closed the right of cross-examination of the accused persons. On that day, the case was fixed for cross-examination of prosecution witness-Kiran. However, the counsel Shri Rajesh Mahant appeared on behalf of accused person and sought an adjournment on the ground that he had filed an application under Section 410 before the learned

Chief Judicial Magistrate for transfer of the case and till disposal of the application, he sought adjournment which the learned Magistrate refused and subsequently at 4:15 PM, case was again taken up. The learned counsel for the accused persons was asked to cross-examine the prosecution witness-Kiran which he refused then the learned Magistrate terminated his right to cross-examine the witness and then the learned Magistrate recorded cross-examination in chief of prosecution witness-Tulsidas PW-2 and Sunita PW-3. Again the counsel for the accused was asked to cross-examine this witness which he refused and subsequently, the right to cross-examination was also terminated. A revision was filed before the learned Sessions Judge, Indore in which the learned Sessions Judge while accepting the revision provided one last opportunity to the accused persons to cross-examine the witnesses with specific direction to the accused persons that they should keep their advocates present on the date fixed by the learned Judicial Magistrate and in case, their advocate is busy or not in a position to remain present before the concerning Magistrate, they should make an alternative arrangement. However, inadvertently, the name of prosecution witness-Kiran was not mentioned in the order passed by learned Sessions Judge dated 06.05.2008 in criminal revision No.886/2007 and, therefore, the accused persons approached the criminal revision court again which was disposed of by the impugned order dated 28.02.2014.

In the impugned order in Para-7, the learned Additional Sessions Judge observed that the revision was already disposed of by the Sessions Judge and then one another revision No.579/2013 was filed for correction of the order which was also dismissed and then this third application was filed.

However, going through the order of the Additional Sessions Judge, it is apparent that the learned Additional Sessions Judge fails to understand the real import of the matter. It was pure unintentional mistake by the Sessions Court. In fact, the

application for revision of the order clearly mentions that by the impugned order, the learned Magistrate terminated their right to cross-examination in respect of three prosecution witnesses. However, inadvertently, the name of Kiran was not mentioned in the order. Therefore, had the learned Additional Sessions Judge considered the matter in right perspective and allowed the revision by allowing the name of another witness-Kiran, it would have saved lot of exercise. By not allowing this, matter is further delayed by two years.

Taking all the facts and circumstances of the case into consideration, this application is allowed. It is directed that in the order passed by learned Sessions Judge, Indore in criminal revision No.886/2007 dated 06.05.2008, in last para with name of witnesses-Tulsidas and Sunita, name of Kiran should also be added.

With aforesaid modifications and direction, this application stands disposed of.

Certified copy, as per rules.

(Alok Verma)
Judge

Chitranjan