

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.123/2016

Rajesh S/o Kesharsingh

Vs.

State of Madhya Pradesh

Shri Sanjay Sharma, learned counsel for the applicant.

Shri Rohit Mangal, learned G.A. for the respondent/State.

ORDER

(Passed on 29/07/2016)

This criminal revision is directed against the order passed by the learned 2nd Additional Sessions Judge, Mhow District-Indore in Sessions Trial No.380/2015 dated 19.01.2016 whereby the learned Additional Sessions Judge dismissed an application filed by defence counsel Shri Salam Mehar, to call the complaint case filed by complainant- Rajesh and Maansingh against the accused persons Gopal, Rajesh and Subhash being counter case of the sessions trial pending before the learned Additional Sessions Judge.

2. The learned Additional Sessions Judge opined in the impugned order that there is a difference in time of the incident. According to the FIR in the sessions trial, the incident took place at 7.00 a.m. while in the complaint case, time of incident is said to

be 7.30 a.m. Also the spot where the incident allegedly took place is different in the complaint case. The house of Gopal in front of which the incident was said to have taken place was not shown by the Investigating Officer in the site map and in this view of the matter, the learned Additional Sessions Judge dismissed the application.

3. Learned counsel for the applicant submits that the incident took place in a same transaction, and therefore, they are counter to each other. According to him, the genesis of both the incident was the same, and therefore, both the cases should be heard as counter cases by the same Court.

4. Learned counsel for the State opposes the application.

5. I have gone through the impugned order, in considered opinion of this Court, the learned Additional Sessions Judge exercised a jurisdiction which is not vested in him. The Section 323 Cr.P.C. provides as under :-

“**S.323.** Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.- If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall, commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the

commitment so made.”

6. According to this Section, discretion lies with the learned Judicial Magistrate First Class to decide whether the case is one which ought to be tried by the Court of Session. The sessions court has no discretion or jurisdiction to decide whether the case is one which is to be tried by the Sessions Court as counter case, and therefore, the applicant should have approached the Magistrate before whom the complaint case is pending to commit the same as counter case of the sessions trial pending before the learned Additional Sessions Judge. In this view of the matter, the order passed by the learned Additional Sessions Judge is not sustainable and liable to be set aside and accordingly, it is set aside.

7. The applicant is directed to file an appropriate application before the learned Judicial Magistrate First Class before whom the complaint case is pending placing all the relevant facts and circumstances before him to decide whether the case is to be committed to the Court of Session.

8. With such observations and directions, this revision stands disposed of.

**(ALOK VERMA)
JUDGE**