

IN THE HIGH COURT OF MADHYA PRADESH**AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SUBODH ABHYANKAR****ON THE 1st OF APRIL, 2022****MISC. CRIMINAL CASE No. 15962 of 2022****(Ravi and three others vs. State of Madhya Pradesh)****(Order is passed in open Court on 01st April, 2022)****Counsel for the Parties:** Shri Vaibhav Pratap Chand, learned counsel for the applicants.Shri Bhaskar Agrawal, Govt. Advocate for the State of
Madhya Pradesh**Whether approved for reporting :** YES**Law laid down :** S.231(2) is a tool available to the defence to defer the cross examination of the prosecution witnesses until other witnesses are examined, this is for the reason that many a times the defence of an accused cannot be opened at the initial stage which may allow the other prosecution witnesses to be prepared for the same. Reference may be had to the decision rendered by the Supreme Court in the case of **State of Kerala v. Rasheed, (2019) 13 SCC 297.**

Very purpose of s.231(2) of Cr.P.C. would be frustrated if the application filed under Section 231(2) of the Cr.P.C. is allowed but the accused persons are still forced to cross-examine the witness. On the other hand, in the absence of any power to review under Cr.P.C., a criminal court, once passes an order, cannot alter or review the same.

Judgment Relied upon : **State of Kerala v. Rasheed : (2019) 13 SCC 297****Significant para No. :** 6 & 7**(Subodh Abhyankar)**
Judge

IN THE HIGH COURT OF MADHYA PRADESHAT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF APRIL, 2022MISC. CRIMINAL CASE No. 15962 of 2022

Between:-

1. RAVI S/O SHRI SHIVLAL JI VERMA , AGED ABOUT 40 YEARS, OCCUPATION: GOVT. EMPLOYEE H.NO. 837, C-SECTOR, SHAHPURA (MADHYA PRADESH)
2. SMT. MEENA W/O SHRI SHIVLAL JI VERMA , AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE H. NO. 837, C-SECTOR, SHAHPURA, HABIBGANJ, (MADHYA PRADESH)
3. SHIVLAL S/O LATE SHRI CHAMPALAL JI VERMA, AGED ABOUT 64 YEARS, OCCUPATION: RETIRED H. NO. 837, C-SECTOR , SHAHPURA, HABIBGANJ, (MADHYA PRADESH)
4. SMT. MEGHA S/O SHRI RAMKUMAR SAINI , AGED ABOUT 32 YEARS, OCCUPATION: HOUSE WIFE HOU NO. 51, WARD NO. 3, CHOUDHARY COLONY MANDSAUR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI VAIBHAV PRATAP CHAND, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THROUGH POLICE STATION KURAWAR, DISTRICT RAJGARH
(MADHYA PRADESH)

.....RESPONDENT

(BY SHRI BHASKAR AGRAWAL, GOVT. ADVOCATE)

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*This Miscellaneous Criminal Case coming on for orders this
day, the court passed the following:*

ORDER

1. The petitioners have preferred this petition under Section 482 of the Cr.P.C., 1973, being aggrieved of the impugned order dated 22.2.2022 passed by the learned First Additional Sessions Judge, Narsingharh, District-Rajgarh in S.T.No. 339/2021, whereby the right of cross-examination of the prosecution witnesses viz; P.w./1 prosecutrix /complainant, Kusumlata, P.w./2 and P.w./3 Sunil has been closed. The petitioners are facing trial under Sections 377, 498-A, 506 (Part-2) of the Indian Penal Code, 1860 and Section 4 of Dowry Prohibition Act, 1961.

2. Counsel for the petitioners has submitted that the learned Judge of the trial court has passed the aforesaid order dated 22.2.2022 thereby reviewing his own order dated 21.12.2021, whereby the application filed by the petitioners under Section 231(2) of the Cr.P.C. for deferring the cross examination of the prosecution witnesses has already been allowed. Counsel has submitted that the aforesaid application was filed on the ground of the witnesses of complainant side are the family members hence they wanted to cross-examine the witnesses after examination in Chief of five of them is recorded before the court which was allowed by the trial court on 21.12.2021, and subsequently, the Examination-in-Chief of four witnesses viz; P.w./1 prosecutrix/complainant, Kusumlata, P.w./2, P.w./3 Sunil and P.w./4 Brijesh were also recorded. However, the 5th witness Deepak has not turned up in the trial court, initially on the ground that he was

corona positive but subsequently, he has not appeared before the trial court. Counsel has submitted that now as the said 5th witness Deepak is not turning up in the trial court for his examination in chief, the learned Judge of the trial court has directed the counsel for the petitioners to cross-examine the witnesses who were present in the court viz., P.w./1 prosecutrix/ complainant, Kusumlata, P.w./2 and P.w./3 Sunil and P.w./4 Brijesh and upon counsel's refusal, their right to cross examining the witnesses has been closed. It is submitted that in such circumstances, if the petitioners are forced to cross-examine the witnesses, the very purpose of filing of application under Section 231(2) of the Cr.P.C. would be frustrated and would be to the utter prejudice to the petitioners.

3. Counsel for the respondent has opposed the prayer. However, it is not denied that the application filed by the petitioners under Section 231(2) of the Cr.P.C. has already been allowed.

4. Heard the counsel for the parties and perused the record.

5. From the record, it is apparent that the learned Judge of the trial court has already allowed the application filed by the petitioners under Section 231(2) of the Cr.P.C. on 21.12.2021 holding that if the statements of the witnesses are recorded separately it might prejudice the defence of the accused persons. However, the impugned order sheet dated 22.2.2022 reveals that on that day only three witnesses were present in the court and the court directed the counsel for the petitioners to cross-examine them and it is also directed that he can raise objections available to him while

examining the other witness Deepak, who has not turned up. However, counsel appearing for the petitioners has refused to cross-examine the witnesses and thus, the right of the petitioners to cross-examine the witnesses, who were present in the court on that date i.e. on 22.2.2022 viz; P.w./1 prosecutrix/complainant, Kusumlata, P.w./2 and P.w./3 Sunil has been closed and regarding P.w./4 Brijesh it is directed that arrest warrant be issued against him.

6. So far as s.231 of Cr.P.C. is concerned, the same read as under:-

“231. Evidence for prosecution.— (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

(emphasis supplied)

7. Apparently, s.231(2) is a tool available to the defence to defer the cross examination of the prosecution witnesses until other witnesses are examined, this is for the reason that many a times the defence of an accused cannot be opened at the initial stage which may allow the other prosecution witnesses to be prepared for the same. Reference may be had to the decision rendered by the Supreme Court in the case of *State of Kerala v. Rasheed, (2019) 13 SCC 297.*

8. In the considered opinion of this court the very purpose of s.231(2) of Cr.P.C. would be frustrated if the application filed under Section 231(2) of the Cr.P.C. is allowed but the accused persons are

still forced to cross-examine the witness. On the other hand, in the absence of any power to review under Cr.P.C., a criminal court, once passes an order, cannot alter or review the same.

9. In view of the aforesaid facts and circumstances of the case, the impugned order dated 22.2.2022 being bad in law, cannot be countenanced and is liable to be set aside.

10. Resultantly, impugned order dated 22.2.2022 is hereby set aside and the learned Judge of the trial court is directed to record the examination in chief of the remaining witness Deepak and thereafter to allow the petitioners to cross-examine the witness in accordance with law.

With the aforesaid, the Miscellaneous Criminal Case stands **allowed.**

Certified copy, as per rules.

(Subodh Abhyankar)
JUDGE