



1

MCRC-30362-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 5th OF SEPTEMBER, 2024MISC. CRIMINAL CASE No. 30362 of 2024*DR. BHARAT CHHAPARWAL**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Ajay Mishra - Advocate for the petitioner.

Shri Santosh Singh Thakur - Govt. Advocate for the respondent/State.

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ORDER

This petition u/S 528 of B.N.S.S.,2023 is filed assailing the order dated 08.05.2024 passed in RCT No. 4739281/2012 passed by the Judicial Magistrate First Class, Indore whereby the right of cross-examination of the complainant – Roopa Chhapparwar has been closed.

The petition inter-alia states as under:

1. The complainant - Roopa has lodged an FIR at Crime No. 1372/2012 for offence punishable u/S 498-A and 506 of IPC at P.S. Sanyogitaganj, Indore on 18.11.2012. On completion of investigation, final report was submitted before the Judicial Magistrate First Class, Indore. The trial at RCT No. 4739281/2012 is underway.
2. On 08.05.2024, complainant Roopa Chhapparwal appeared as a witness before learned trial Court. Her examination-in-chief was recorded by the trial Court. The junior counsel on behalf of the accused requested for



adjournment as father of the senior Counsel was admitted in the hospital.

Matter was fixed for cross-examination after lunch.

3. Learned trial Court closed the right of cross-examination at 3:30 p.m. Learned counsel for the accused/petitioner appeared at 3:40 p.m. and stated that they are ready to cross-examine the witness. Thereafter, application was prepared and filed at 4:00 p.m., but the learned trial Court has taken the application at 5:40 p.m. and noted that application be kept on record.

Feeling aggrieved by the impugned order dated 08.05.2024, present petition is submitted on the following grounds:

1. The impugned order passed by the learned trial Court is against the facts and circumstances and settled principles of law.
2. For last 12 years, no witness was examined. The petitioner had filed a petition for quashment before the High Court whereon the proceedings were stayed. Therefore, trial could not proceed.
3. The complainant – Roopa Chhapparwal is the complainant and prime witness in the matter. The right to cross-examine her was closed at 3:30 p.m. in haste. Learned trial Court has taken a harsh step.

On these grounds, it is requested that the impugned order dated 08.05.2024 be set aside and an opportunity be granted to the petitioner for cross-examination of the complainant.

Learned counsel appearing for the petitioner referring to copies of the proceedings before the trial Court dated 30.01.2024, 23.03.2024 and 08.05.2024 submits that the learned trial Court proceeded in haste and denied cross-examination without according sufficient opportunity. On 08.05.2024,



the counsel for petitioner was not available due to personal exigency. The trial Court could have adjourned the hearing on cost. Learned counsel requests that an opportunity of cross-examination be provided. The petitioner shall ensure cross-examination of the witness.

Per contra, learned counsel for the State opposes the petition and submits that the impugned order reveals that multiple opportunities have already been extended to the accused, but they were delaying the trial. Therefore, learned trial Court was compelled to proceed with the trial by closing the opportunity of cross-examination. The petition is meritless and deserves to be dismissed. Heard both the parties and perused the record as well as the impugned order. It appears that on 30.01.2024, the complainant – Roopa Chhapparwal was present for evidence. On request of learned counsel for the accused - Dhiraj Chhapparwal and Bharat Chhapparwal, her examination was deferred with the direction that both the parties shall remain present on the next date of hearing at 11:00 a.m. In case of default, right to cross-examination may be closed. On the next date of hearing, since Roopa Chhapparwal was absent, bailable warrant of arrest was issued to secure her presence. On 08.05.2024, the complainant - Roopa Chhapparwal was present for evidence. At 12:30 p.m., matter was adjourned for appearance of Dhiraj Chhapparwal till 1:30 p.m. At 1:30 p.m., Dhiraj appeared and requested for adjournment. Examination-in-chief of Roopa Chhapparwal was recorded. Matter was adjourned for cross-examination of complainant - Roopa Chhapparwal after tea break at 3:30 p.m. At 3:30 p.m. again request for adjournment was made which was denied. Considering the default, learned trial Court closed the right to cross-examine



the complainant – Roopa Chhapparwal.

The right to cross-examine material witness for the prosecution is a valuable right. It is necessary concomitant of fair trial. Sufficient opportunity need to be given to cross-examine the witness. Although the record reveals default on part of the petitioner to avail the opportunity of cross-examination, but considering the circumstances on 08.05.2024, as revealed by the order-sheet, the hearing could have been adjourned with the cost for next day, as mandated by Section 309 of Cr.P.C. The closing of right to cross examine the material witness is a harsh step, which needs to be taken with caution and circumspection.

In view of this, the impugned order suffers from propriety, therefore, in exercise of inherent jurisdiction u/S 528 of B.N.S.S., 2023, the impugned order is set aside for the ends to justice, subject to compliance with the following conditions:

1. Learned trial Court shall issue process to secure presence of complainant – Roopa Chhapparwal and shall provide an opportunity of her cross-examination to accused Bharat Chhapparwal and Dhiraj Chhapparwal.
2. This shall be the only opportunity for cross-examination of complainant - Roopa Chhapparwal. The accused shall start her cross-examination immediately on her appearance before the Court. Except in case of extreme unavoidable circumstances, adjournment shall not be granted for the cross-examination of the witness. The hearing shall continue until the cross-examination of witness is complete, on next working day also, if needed.
3. All the expenses for appearance of complainant – Roopa Chhapparwal on



5

MCRC-30362-2024

08.05.2024 and on the next date of hearing shall be paid by the accused before starting the cross-examination.

4. In default of any of these conditions, learned Judicial Magistrate First Class/trial Court shall be at liberty to proceed with the trial in accordance with the law.

With these directions, petition u/S 528 of B.N.S.S., 2023 is disposed of.

(SANJEEV S KALGAONKAR)
JUDGE

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