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CRR-905-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 7th OF MAY, 2025CRIMINAL REVISION No. 905 of 2025*SHYAM PREMCHANDANI S/O SHRI RAJKUMAR PREMCHANDANI**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Petitioner by Shri Vinayak Bhalchandani - Advocate.

*Respondent - State of Madhya Pradesh by Shri Surendra Kumar Gupta -
Government Advocate appearing on behalf of Advocate General.*
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ORDER

This criminal revision under Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023 / Section 397 of Code of Criminal Procedure, 1973 is filed by the revision petitioner feeling aggrieved by order dated 19.02.2025 (Annexure R/2) passed by Third Additional Sessions Judge, Dewas (MP) in Sessions Trial No.73 of 2023, whereby the right to cross-examine the Investigating Officer (IO) of the case was closed by the trial Court on default of the accused to cross-examine him.

2. Learned counsel for the petitioner, in addition to the grounds mentioned in the petition and referring to the impugned order, contends that Mr. Saleem Khan, Inspector was present, his examination-in-chief was recorded and at the stage of cross-examination, accused made a request that Senior Counsel is not available to cross-examine the witness, therefore, an



opportunity be accorded, however, learned trial Court rejected the application and proceeded to close the right of the accused to cross examine the IO on the ground of delay and the matter being enlisted as twenty five oldest cases. Learned counsel for the petitioner further submits that this is the solitary default on the part of the accused. Learned counsel assures that if an opportunity is accorded for cross-examination of the IO, cost incurred in cross-examination of the witness will be borne by the accused.

3. Per contra, learned counsel appearing for the respondent - State, referring to the impugned order, submits that associate counsel was present on the date of hearing. He had cross-examined other witness, Assistant Sub Inspector of Police, Ram Naresh Sharma but declined to cross-examine the IO and made a request for grant of adjournment, which was duly rejected by the trial Court. The trial Court did not commit any error in rejecting the request.

4. Heard both the parties, perused the record and the impugned order.

5. As informed, IO was present for the first time on 19.02.2025. The associate counsel, Shri Poonamchandra Rathore, although cross-examined other witness but made a request for an adjournment, as senior counsel was not available for cross-examination.

6. The right to fair trial is one of the fundamental guarantee of the rule of law, aimed at ensuring administration of justice. Fair trial includes fair and proper opportunities allowed by law to prove defence by cross examination of prosecution witness. Denial of adequate opportunity to



cross-examine a material prosecution witness may seriously prejudice the right to defend of the accused. The closure of right to cross-examine the Investigation Officer on first opportunity appears to be harsh and improper. The impugned order suffers from impropriety, therefore, exercise of supervisory jurisdiction under Section 438 of the BNSS, 2023 is needed to ensure propriety of the proceedings and a fair trial.

7. Consequently, impugned order dated 19.02.2025 (Annexure R/2) passed by learned Third Additional Sessions Judge, Dewas (MP) in Sessions Trial No.73 of 2023 is set aside. The accused / petitioner is granted an opportunity to cross examine Inspector Saleem Khan (IO), subject to stringent condition to ensure fair and speedy trial. It is directed that the trial Court shall afford single opportunity to the accused to cross-examine Mr. Saleem Khan (IO). In case of any default, trial Court may proceed with the trial, in accordance with law. The cost for re-summoning the aforesaid witness of Rs.2,000/- (rupees two thousand only) shall be deposited within a period of seven working days .

With this direction, the present criminal revision stands disposed off.

Certified copy, as per rules.

(SANJEEV S KALGAONKAR)
JUDGE