

HIGH COURT OF MADHYA PRADESH AT JABALPUR**SINGLE BENCH: HON'BLE SHRI JUSTICE SUBHASH KAKADE****CRIMINAL REVISION NO. 1628 OF 2015**

- APPLICANTS:**
- (1) Awadh Narayan S/o Bhawarlal
Aged about 50 years,
 - (2) Dayaram S/o Bhawarlal
 - (3) Nemichand S/o Awadh Narayan
 - (4) Januma Prasad S/o Awadh Narayan

All R/o Village Gole, Kalapani, Kolar Road,
District Bhopal (M.P.)

Versus

- RESPONDENT:**
- (1) State of Madhya Pradesh,
through Police Station Incharge
Kolar Road Bhopal,
District Bhopal (M.P.)
- COMPLAINANT:**
- (2) Arun Khatri S/o Shri A.S. Khatri
R/o MIG 204, Beenakunj, Bhopal (M.P.)

Present Address:- E-5,
Old Meenal Residency, Bhopal (M.P.)

Ms. Jayalakshmi Iyer, Advocate for the applicants.

Shri R.S. Shukla, Panel Lawyer for the respondent/State

(O R D E R)

Passed on: 04.09.2015

This revision petition has been preferred by the applicants under Section 397 read with Section 401 of Criminal Procedure Code, 1973, here-in-after referred to "the Code", against the impugned order dated 02.07.2015 passed by learned Additional Sessions Judge, Bhopal in Sessions Trial No.

617/2010, by which the application filed under Section 233 of the Code for summoning defence witness and production of documents has been rejected and also closed the defence of the applicants.

02. Facts of the prosecution story need not to be discussed elaborately as trial is resting at the defence stage. Defence stand of the applicants is that the complainant a property broker is associated with Bhu-Mafiya and on the date of incident, while the applicants were reaping crops on their field, the complainant, his wife along with antisocial elements entered into field and tried to take possession forcibly. On obstruction by the applicants, the complainant and his companions assaulted and abused the applicants by caste and threatened them to surrender their field. The applicants went to concerning Police Station for lodging the report but, it was futile. On 10.10.2010, the applicants No.1 and 2 went to AJAK Thana for lodging a written report against the complainant and his wife and same was received at AJAK Thana.

03. After completion of prosecution evidence, the applicants preferred an application under Section 233 of the Code for summoning defence witness for production of written report, which was duly received at AJAK Thana in support of above defence, but, same was rejected by impugned order, hence this revision.

04. Ms. Jayalakshmi Iyer, Advocate for the applicants has submitted that learned trial Court has passed the impugned order without considering the material facts and documents available on record, therefore, the impugned order be set aside and direct learned trial Court to summon the witness Head Muharir of AJAK Thana, Bhopal and to summon Rojnamcha Sanha and original complaint filed by the applicants from AJAK Thana Bhopal.

05. Shri R.S. Shukla, Panel Lawyer for the respondent/State has submitted that learned trial Court rightly passed the impugned order and thus, the revision petition is liable to be dismissed.

06. Considered the rival submissions made by learned counsel for the parties and perused the available record.

07. Section 233 of the Code gives power to the Court to issue summons for attendance of any witness or production of any document, which reads as under:-

“If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

08. This fact need not to be repeated that applicants requested to summon Rojnamcha Sanha with original complaint filed by them in the AJAK Thana, Bhopal. Certainly, that can only be produced if there would be order from the Court because it is not possible for the applicants to produce the above evidence before the Court on their own. Apart from this, on perusal of photocopy of application it was clear that same was received at AJAK Thana, Bhopal by Police Officer. It is also clear that application filed by the applicants was not baseless or vexatious because the applicants want to summon above evidence to prove their defence and under the law they cannot be deprived with.

09. In above facts and circumstances, this revision petition is hereby allowed. The impugned order dated 02.07.2015 is hereby set aside. Learned trial Court is directed to summon Rojnamcha of AJAK Thana, Bhopal and also issue summon to Head Muharir of AJAK Thana, Bhopal for the evidence.

10. Interim order dated 29.07.2015 passed by this Court stands vacated.

(Subhash Kakade)
Judge

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