

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL
ON THE 9th OF JULY, 2022

MISC. CRIMINAL CASE No. 27507 of 2022

Between:-

1. MAJID BEG, S/O SAJID BEG, R/O VILLAGE:
GHISI, POLICE STATION BARGHAT DISTRICT
SEONI (MADHYA PRADESH)
2. SHAKIR, S/O HAFEEZ KHAN, R/O VILLAGE
LALPUR, POLICE STATION BARGHAT, DISTRICT
SEONI (MADHYA PRADESH)
3. ARIF, S/O HAFEEZ KHAN, R/O VILLAGE LALPUR,
POLICE STATION BARGHAT DISTRICT SEONI
(MADHYA PRADESH)
4. MAJID, S/O RAJIK KHAN, R/O VILLAGE: GHISI,
POLICE STATION BARGHAT DISTRICT SEONI
(MADHYA PRADESH)

(BY SHRI VISHAL DANIEL - ADVOCATE)

.....PETITIONERS

AND

THE STATE OF MADHYA PRADESH, THROUGH
POLICE STATION, FOREST RANGE OFFICER,
RANGE - BARGHAT, DISTRICT SEONI (MADHYA
PRADESH)

.....RESPONDENT

(BY SHRI N.S. SOLANKI - PANEL LAWYER)

.....
*This application coming on for admission this day, the court passed the
following:*

ORDER

This petition under Section 482 of the Cr.P.C. has been preferred for
quashment of the order dated 10.05.2022, passed by the Chief Judicial
Magistrate, Seoni in Criminal Case No.2787/2013 (State of Madhya Pradesh

Vs. Majid and Others), under Section 26 of the Indian Forest Act, Rule 22 read with Rule 5 of the M.P. Transit (Forest Produce) Rules, 2000 and Section 16 read with Rule 5 of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, whereby learned Chief Judicial Magistrate on the date fixed for judgment instead of rendering judgment has directed to recall un-examined prosecution witness for evidence throughailable warrant and has fixed the case for rest of the prosecution evidence.

2. Learned counsel for the petitioners has submitted that charge sheet was filed against the petitioners long back in 2013 and thereafter, charges were framed on 02.05.2016. A number of opportunities were given to the prosecution to lead its evidence but prosecution could examine only some of the witnesses. After examination of accused, case was fixed for defence evidence for number of occasions, but no defence evidence was adduced by the applicants. On 07.01.2020, 22.01.2020, 27.01.2020, 11.02.2020, 25.02.2020, 13.03.2020, 24.02.2021, 05.03.2021, 09.03.2021, 19.03.2021, 26.03.2021, 07.04.2021, 20.07.2021, 05.08.2021, 24.08.2021, 09.09.2021, 21.09.2021, 29.09.201, 05.10.2021, 21.10.2021, 29.10.201, 12.11.2021, 30.11.2021, 13.12.2021, 23.12.2021, 11.01.2022, 27.01.2022, 03.02.2022, 15.02.2022, 24.02.2022, 14.03.2022, 25.03.2022, 08.04.2022, 19.04.2022, 29.04.2022, 02.05.2022, case was fixed for final arguments. Ultimately, final arguments were heard on 05.05.2022 and case was fixed for judgment for 10.05.2022, but on 10.05.2022, instead of rendering judgment, learned Chief Judicial Magistrate has directed the prosecution to produce the witnesses who remained un-examined.

Learned counsel for the petitioner further submitted that petitioners are

facing trial since 2013 and prosecution closed its evidence long back on 19.09.2019. Accused persons were examined under Section 313 of the Cr.P.C on 26.09.2019 and case was fixed for defence evidence. Number of opportunities were given for defence evidence. Thereafter, case was fixed for final arguments for 07.01.2022 but learned trial Court did not heard final arguments almost for a period of more than 2 years and 6 months. It heard final arguments on 05.05.2022 and fixed the case for delivery of judgement on 10.05.2022, but instead of rendering the judgment, it has ordered for summoning of the un-examined prosecution witnesses. It is submitted that before proceeding to pass the impugned order, learned trial Court failed to call upon or grant an opportunity of hearing to the petitioners. Passing of the impugned order without giving an opportunity of hearing to the petitioners is abuse of process and powers vested in the Court under Section 311 of the Cr.P.C. Therefore, it has been prayed that impugned order be set aside and if learned trial Court wants to pass any such order, it should be passed after giving an opportunity of hearing to the petitioners/accused persons.

3. On the other hand, learned counsel for the State has submitted that criminal Court has ample power under Section 311 of the Cr.P.C to summon any person as a witness or recall and re-examine any such persons. Even if the evidence on both sides is closed, even then trial Court in exercise of its power for fair play and good sense for rendering the complete justice, if the requirement of case demands, can call any witnesses for examination. Learned Chief Judicial Magistrate has exercised its power conferred under Section 311 of the Cr.P.C. Therefore, no fault can be found with the impugned order. Hence, it is submitted that present petition being devoid of merits be dismissed.

4. I have heard learned counsel for the parties and perused the impugned

orders and order sheets submitted along with the petition.

5. It is revealed that petitioners are facing rigour of criminal trial since 2013. Charges were framed in 2016. Prosecution evidence was closed on 19.09.2019 and during this period more than 28 opportunities were given to prosecution to adduce its witnesses. After giving number of opportunities to accused also to produce its evidence, case was closed and was fixed for final arguments. It is regretful to note that learned CJM, Seoni did not heard final arguments for more than a period of 2.5 years and after listening the arguments when the case was fixed for judgment, CJM instead of rendering judgment has passed order to summon the prosecution witnesses who have remained un-examined.

6. It is well settled that the powers conferred under Section 311 of the Cr.P.C should be invoked by the Court only to meet the ends of justice. The power is to be exercised only for strict and valid reason. It should be exercised with great caution and circumspection, but such power has to be exercised after taking into consideration the facts and circumstances of each case. In ***Swapan Kumar Chatterjee Vs Central Bureau of Investigation***, reported in **2019 (2) Crimes 32**, Hon'ble Supreme Court held as under:

"Where the prosecution evidence has been closed long back and the reasons for non-examination of witness earlier is not satisfactory, the summoning of the witnesses at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the Court should not encourage the filing of successive applications for recall of a witness under this provision"

7. The grudge of the petitioners that impugned order has been passed without giving them an opportunity of hearing appears truthful and factual. The grant of an opportunity of hearing is a cobblestone and adjudicatory process

and denial thereof is an anathema to the rule of law. Justice and fairness requires that before proceeding to pass an order under Section 311 of the Cr.P.C, an opportunity should be granted to the accused to urge that the Court desist from exercising its *suo moto* powers under Section 311 of the Code. A perusal of the impugned order reflects that learned Chief Judicial Magistrate did not grant an opportunity of hearing to the petitioners/accused. Thus, order of re-summoning of un-examined prosecution witnesses appears against the settled principle of law and violates the principles of natural justice.

8. In this case, the trial Court has not acted in a fair manner as firstly it avoided to hear final arguments for a period of more than 2 years and 5 months and when it heard final arguments and fixed the case for judgment, instead of rendering judgement, it has ordered for re-summoning of un-examined prosecution witness without giving any opportunity of hearing to accused. I am of the considered view that such order being against the principle of natural justice is not worth upholding. It is a settled position of law that prosecution also cannot be given an opportunity to fill up the *lacuna* in its evidence and in a case where accused have faced a rigour of trial for almost 9 years, no orders should have been passed under Section 311 of the Cr.P.C., without giving them an opportunity of hearing.

9. Therefore, in view of the above, present petition is **allowed**. Order dated 10.05.2022, passed by the learned Chief Judicial Magistrate, Seoni is set aside and learned Chief Judicial Magistrate is directed to decide the matter afresh after granting an opportunity of hearing to the petitioners/accused and to raise all such objections as are available to them, in accordance with law. Criminal case is pending for more than 9 years. Therefore, learned CJM is expected to dispose of this case as early as possible preferably within a period

of six months from the date of receipt of copy of this order.

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen

