
(2016) 03 MP CK 0035

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2191 of 2015

Lal Sahab

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482

Citation : (2016) 1 MPWN 281

Hon'ble Judges : C.V. Sirpurkar, J.

Bench : Single Bench

Advocate : Qasim Ali, Advocate, for the Appellant; Pramod Kumar Pandey, Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

C.V. Sirpurkar, J.—Learned counsel for the applicants submits that he has no instructions in the matter.

2. A perusal of the record reveals that on 18.12.2015, learned counsel for the applicants was directed to implead the complainant Rekha Ahirwar as respondent no. 2; however, learned counsel for the applicants submits that since he was unable to contact the applicants, he could not comply with Court order dated 18.12.2015.

3. In aforesaid circumstances, the Court shall proceed to dispose of this miscellaneous criminal case under Section 482 of the Cr.P.C., on merits.

4. This miscellaneous criminal case is directed against the orders dated 30.04.2014 passed by the Court of JMFC, Bhopal in R.T.No.7887/2012 and dated 29.11.2014 passed by the Court of Third Additional Sessions Judge, Bhopal in Criminal Revision No.415/2015.

5. The facts necessary for disposal of this miscellaneous criminal case may briefly be stated thus: A perusal of the order dated 30.04.2014 passed by the Court of

JMFC, Bhopal reveals that the victim and prosecution witness Rekha Ahirwar was present before the Court of J.M.F.C. on 07.10.2013, 16.01.2014 and 18.03.2014 for evidence; however, on all three dates, learned counsel for the accused persons/petitioners prayed for time to cross-examine the witness on one or the other. Consequently, the right of the accused persons to cross-examine the witness was closed. Thereafter, an application under Section 311 of the Cr.P.C. was moved, which was dismissed mainly on the ground that different reasons were given at the time of praying for adjournment and in the application under Section 311 of the Cr.P.C., for adjournment. It was also observed that sufficient opportunities had already been granted to the accused persons to cross-examine the witness, before the right of the accused persons to cross-examine the complainant was closed.

6. The accused persons/petitioners preferred criminal revision no.415/2014 against the aforesaid order, which was dismissed on the ground that learned trial Court was perfectly justified in closing the right of the accused persons to cross-examine the victim as sufficient opportunities had been granted to the accused persons to cross-examine her.

7. It was also observed in view of the judgment rendered by the Supreme Court in the case of *Sethuraman v. Rajamanickam*, (2009) 5 SCC 153 that an order on application under Section 311 of the Cr.P.C. is an interlocutory order; therefore, criminal revision against such order being hit by the bar engrafted in sub-section 2 of Section 397 of the Cr.P.C. is not maintainable.

8. In this miscellaneous criminal case under Section 482 of the Cr.P.C. against aforesaid orders passed by the learned JMFC and learned ASJ, no argument has been advanced; however, it is clear that several opportunities were granted to the accused persons/applicants to cross-examine the victim before their right to cross-examine was closed. However, they failed to avail of any of them. It appears from the impugned order that prayer for adjournment was being made simply to harass the victim; as such, no interference is called for in the impugned orders.

9. Moreover, it is not clear as to whether or not the trial is still pending. In any case, the Supreme Court has held in the case of *Amar Nath v. State of Haryana*, 1977 CRI. L.J. 1891 Supreme Court that the powers under Section 482 of the Cr.P.C. should not be invoked to nullify the bar engrafted under sub section 2 of Section 397 of the Cr.P.C.

10. In aforesaid view of the matter, no interference in the impugned orders is warranted to secure ends of justice.

11. Consequently, this miscellaneous criminal case under Section 482 of the Cr.P.C. deserves to be and is accordingly dismissed.