

(2023) 05 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 19458 Of 2023

Sandeep Sharma

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 04-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 207, 231, 482, 483
Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307

Citation : (2023) 05 MP CK 0025

Hon'ble Judges : Deepak Kumar Agarwal, J

Bench : Single Bench

Advocate : Rajmani Bansal, R.S. Yadav

Final Decision : Allowed

Judgement

Deepak Kumar Agarwal, J

This petition under Section 482 r/w 483 of CrPC has been filed by the petitioner for setting aside the order dated 18.4.2023 passed in Case No. 93/2018 by VIIth Additional Sessions Judge Gwalior by which application filed by the petitioner under Section 207 r/w 91 of CrPC and under Section 231 of CrPC has been dismissed.

As per the prosecution story, complainant Ganga Singh alleged that on 28.09.2017 when he was at this house in the CP colony he told his neighbor Sonu Sharma that you have built the house by occupying three and a half feet road and complained that now you are constructing a platform. He told that he would complain to the police and Tehsil and Municipal Corporation in turn Sonu Sharma said do whatever you want to do, then Sonu called his father Rajesh, both brothers and two other persons wherein Sonu took twelve bore gun, Sonu's one brother was carrying a revolver, another brother was carrying Sariya, Rajesh also carrying Sariya and Sonu's friend was carrying a sword and another friend was carrying shovel. Then Sonu and his father Rajesh shouted that these people

are obstructing the construction of house, today we would kill them and all of them attacked with the intention to kill the complainant party. Sonu by using his 12 bore gun fired on Sanjay. Bullet hit on his chest. Brother of Sonu by using his revolver fired on the complainant. Complainant ducked down and survived. Rajesh assaulted the complainant on his head by using Sariya. Complainant sustained injuries on his head. Blood started oozing out. Another brother of Sonu assaulted the complainant by Sariya which hit on his left leg. Friend of Sonu assaulted the complainant with shovel. Another friend of Sonu assaulted Satendra who is son of complainant by using sword. Satendra saved himself by moving away. Thereafter brother of Sonu assaulted Satendra with Sariya which hit on his head due to which he sustained injury on his head. Blood started oozing out. Mahavir Singh Tomar, Pappu Singh Parmar and Santosh Sikarwar saw the incident. After the incident, injured persons were brought to the hospital for treatment where during treatment Sanjay-son of complainant succumbed to the gunshot injuries. Complainant reported the matter to the Police Authorities. On his information, Dehati Nalishi No. 0/17 for the offence punishable under Section 307, 302, 147, 148, 149 of IPC was registered. Thereafter on the basis of Dehati Nalishi Fir bearing crime No.750/2017 for the aforesaid offence was registered. After completion of investigation, charge-sheet in the matter was filed. The DVR containing video recording of the incident and two pen drives were seized by the police which have never been supplied to the petitioner for which petitioner filed applications under Section 207 r/w 91 of CrPC. An application under Section 231 of CrPC has also been filed by the petitioner for deferring the cross examination of respondent No.2 and sought permission for chief examining the prosecution witnesses No.1-10 before cross-examining Ganga Singh Bhadoriya PW-1. Learned Court below by impugned order rejected both the applications filed by the petitioner. Against the said impugned order, petitioner has preferred this petition.

It is submitted by learned counsel for the petitioner that the right of accused to receive documents/statements submitted before the Court is absolute and must be adhered to by the prosecution. The Court must also ensure supply of documents/statements to the accused in accordance with law before proceeding further. In support of his contention, learned counsel for the petitioner has relied upon the decision of Hon'ble Apex Court rendered in V.K. Sasikala Vs. State rep. by Superintendent of Police (2012) 9 SCC 771.

Learned counsel for the State opposed the submission advanced by learned counsel for the petitioner by submitting that a well reasoned order has been passed by the Court below which needs no interference.

After hearing learned counsel for the rival parties and on going through the judgment passed by Hon'ble Apex Court in V.K. Sasikala (supra), this

Court is of the opinion that learned court below has committed an error in passing the impugned order.

Accordingly, this petition is allowed. Impugned order dated 18.4.2023 is set-aside. Learned Court below is directed to provide a copy of DVR and Pen Drives to the petitioner and thereafter proceed further in the matter.