

(2000) 04 MP CK 0049

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 390 of 2000

Smt. Rekha Sharma

APPELLANT

Vs

Ramesh Chandra Sharma and Others

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 397, 401
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2000) 3 MPHT 136 : (2000) 2 MPJR 331 : (2001) 1 MPLJ 699

Hon'ble Judges : S.S. Saraf, J

Bench : Single Bench

Advocate : S.L. Kochar, for the Appellant; D.N. Pathak, for Respondent Nos. 1 to 4 and A.K. Verma, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saraf, J.

This is a criminal revision u/s 397 read with Section 401 of the Code of Criminal Procedure against the order dated 14-2-2000 passed by the learned Chief Judicial Magistrate, Umaria in Criminal Case No. 88/83.

The facts giving rise to this petition are these :-- The respondents No. 1 to 4 are facing trial for offence under Sections 406 and 420 of I.P.C. on the basis of a report lodged by the petitioner to the concerned police whereby the concerned police filed a challan against them. The Additional D.P.O. filed an application u/s 311 of Cr.P.C. for recalling the petitioner for further examination on the point whether the document Ex. P-18 bore her signature. The learned Chief Judicial Magistrate after considering the facts and circumstances of the case, came to the conclusion that the further examination of the petitioner is necessary to the just decision of the case but rejected the application following the decision of the Supreme Court in Raj Deo Sharma Vs. The State of Bihar, . The learned Magistrate also closed the prosecution case in view of the direction given by the Supreme Court in Raj Deo Sharma's case (supra). Aggrieved by the impugned

order dated 14-2-2000, the present petition has been filed.

Having heard the learned counsel for both the sides and having gone through the entire material on record, I am of the view that this petition deserves to be allowed. A perusal of the impugned order dated 14-2-2000 establishes that the learned Magistrate himself is of the opinion that recalling of the petitioner for further examination is essential. He, however, rejected the application only on the ground that prosecution could not produce evidence within the stipulated period as observed by the Supreme Court in Raj Deo Sharma's case (supra).

The Supreme Court in Raj Deo Sharma's case (supra) has also observed that the power of the Court as envisaged in Section 311 Cr.P.C. has not been curtailed by the directions given by the Supreme Court in Raj Deo Sharma's case (supra). It has, further, been held by the Supreme Court that even if the prosecution evidence is closed in compliance with the directions given in the main judgment, it is still open to the prosecution to invoke the powers of the Court u/s 311 of Cr.P.C.. The Supreme Court has observed as under:

"We make it clear that if evidence of any witness appears to the Court to be essential to the just decision of the case, it is the duty of the Court to summon and examine or recall and re-examine any such person."

The learned counsel appearing for the respondent Nos. 1 to 4 has further contended that the finding of the learned Magistrate that further examination of the petitioner is essential is not a proper and legal finding. Having gone through the entire material on record, I am unable to agree with the contention raised by the learned counsel for the respondent Nos. 1 to 4. When the petitioner Smt. Rekha Sharma was examined in the Court, the original document Ex. P-18 was not in the record, though its photocopy was there. As per provisions of law, original signature of the petitioner was to be proved and for that purpose the original document was necessary. Since the original document containing the signature of the petitioner was not in the record, when she was first examined by the prosecution, it was essential to further examine her on the point whether the impugned document contained her signature. It has further been contended by the learned counsel for the petitioner that the closure of the prosecution case in view of the directions given by the Supreme Court in Raj Deo Sharma's case (supra) is not proper. On the contrary, learned counsel appearing for respondent Nos. 1 to 4 has urged that the closure of the prosecution case is proper. Without going in detail, it is directed that the matter shall be reconsidered by the trial Court in the light of the directions given by the Supreme Court in Raj Deo Sharma's case (supra) and if it is found that the delay was also caused by the respondent Nos. 1 to 4, it shall not be mandatory for the learned Magistrate to close the case.

The learned counsel for the respondent Nos. 1 to 4 has also contended that the petition is not tenable as the application u/s 311 of Cr.P.C. was filed by the prosecution which did not prefer any revision against the impugned order. True,

the application was filed by the prosecution but since the petitioner is the complainant in the case, she is not prevented from filing a revision against the impugned order.

In view of above, the impugned order is not sustainable in law and hence the petition is allowed. The impugned order dated 14-2-2000 is quashed. It is directed that the prosecution shall be given an opportunity to further examine the petitioner on the point as discussed above.