

(2017) 02 MP CK 0233
In the Madhya Pradesh High Court
Case No : 531 of 2016

The Oriental Insurance Company? Ltd Vs Shyama Devi Sahu, W/o Late Umesh

Date of Decision : 09-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#) - Calling for records to exercise powers of revision - High Courts powers of revision
[Indian Penal Code, 1860](#)

Citation : (2017) 02 MP CK 0233

Hon'ble Judges : S.K.Awasthi

Bench : Single Bench

Advocate : Sushil Goswami, R.K. Awasthi, F.A. Shah

Judgement

1. This criminal revision has been preferred by the applicant under Sections 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") against the order dated 02.05.2016 passed by Additional Sessions Judge, Ganjbasoda, District Vidisha, in Sessions Trial No.259/2012 whereby the Court below has closed the right of the applicant to depose his defence evidence.

2. Briefly stated facts of the case are that the applicant is facing trial for offences under Sections 304-B, 498-A of IPC and Section 3/4 of Dowry Prohibition Act. After completion of prosecution evidence and examination of accused, the case was fixed for examination of defence witnesses and list of 16 witnesses was presented by the accused. Trial Court issued summons to call the defence witnesses. Thereafter, the trial Court observed that from 04.09.2013 the case is being listed for defence evidence and several opportunities have been given to the applicant and to the accused persons but they are not pursuing their witnesses, therefore, on 09.02.2014, a last opportunity was given to the accused person for production of defence evidence. On 02.05.2016, when the defence witnesses have not appeared, the Court below has closed the right of defence to adduce their further evidence and case was fixed for final arguments.

3. Aggrieved by aforesaid order, this revision petition has been preferred by

applicant .

4. Learned counsel for the applicant submits that the witnesses which are to be examined by the accused person are Government servant and list of witnesses were submitted before the trial Court. The summons were issued to the defence witnesses by the Court below but they have not returned back either served or unserved. There are only three witnesses remained to be examined which are important witnesses. In the impugned order, it was mentioned that the defence witnesses are not present, therefore, the right of defence to adduce their evidence has been closed, but the real fact is that the applicant has submitted an application to summon the defence witnesses through the Court below and for which he deposited requisite fees, therefore, it was for the Court below to call the defence witnesses. Hence, he prays for setting aside the impugned order.

5. On the contrary, learned counsel for the respondents submits that the case has been pending since 2011 and applicant has been granted various opportunities to produce his witnesses. In fact, the applicant is trying to prolong the trial, therefore, the trial Court has rightly rejected the application. Hence, he prays for dismissal of this revision petition.

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

7. On perusal of the order sheets of the trial Court, it appears that the case was listed for recording of defence evidence on 04.09.2013 and ample opportunities have been given to the applicant to produce his evidence. However, keeping in view that the applicant cannot be deprived of his right and also keeping in view that the proceeding pending before the trial Court is unnecessarily delayed, the interest of justice would be served, if an opportunity is provided to the applicant for adducing the evidence. Therefore, looking to the facts and circumstances of the case, the revision petition is hereby disposed of with a direction that trial Court shall grant one opportunity to the applicant to produce his remaining witnesses, subject to deposit the cost of Rs. 4,000/- and if applicant fails to adduce the evidence on such date, the Court below would be at liberty to proceed further for final arguments.

8. With the aforesaid directions, this revision petition stands disposed of.