

Mohan Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Apr-17-2013

Appellant : Mohan

Respondent : The State of Madhya Pradesh

Judgement :

1 M.Cr.C.No.10583/2006 M.Cr.C.No.10583/2006 17.04.2013 Shri Manish Datt, Senior Advocate with Shri Puspendra Dubey, Advocate for the petitioner.

Shri Pramod Chourasiya, Panel Lawyer for the respondent/State.

Present petition has been preferred under section 482 Cr.P.C against the order dated 11/11/2006 passed by 13th Additional Sessions Judge, Jabalpur in Sessions Trial No.252/2004 rejecting the application of petitioner under section 311 Cr.P.C for recalling the witnesses Badri Prasad Burman (PW-2).Radhika Burman (PW-3).and Parvesh Kumar Burman (PW-4) for further examination.

Petitioner along with other co-accused persons is facing a trial under section 304B, 498A/34 IPC in respect of death of Preeti Burman on 09/05/2003 in the matrimonial house in suspicious condition.

Initially petitioner and two other accused persons have been shown absconded in the charge sheet.

Statement of Dr.

Arun Jain (PW-1) was recorded on 28/07/2004.

On 22/09/2004 statements of Badri Prasad Burman (PW-2).Radhika Burman (PW-3).and 2 M.Cr.C.No.10583/2006 Parvesh Kumar Burman (PW-4) have been recorded.

Prayer of additional examination of aforesaid witnesses have been declined by the trial court by impugned order on the ground that sufficient cross examination had already been done on them.

Learned counsel for the petitioner submits that aforesaid witnesses have been examined in the year 2004 in another sessions trial whereas petitioner was arrested and brought before the court on 25/07/2005 and is facing trial in S.T.No.272/2004 a new session trial.

On perusal of Annexure A-2, it becomes clear that in application under section 311 Cr.P.C filed by the petitioner in this behalf, this fact did not find place.

Similarly in the impugned order matter is not examined from this angle that petitioner was arrested at a subsequent stage and has been made accused in a separate trial.

Naturally, it is right of an accused to cross examine the witnesses by a counsel of his choice.

Had it been the situation that on 25/07/2005 the petitioner was brought before the court then certainly witnesses examined in the year 2004 are required to be examined/cross examined afresh by the accused.

3 M.Cr.C.No.10583/2006 In view of the aforesaid, this petition is disposed of with direction that petitioner shall prefer an application before the trial court containing the facts those have been mentioned in this petition.

On receiving such an application trial court shall examine the record, hear the parties and will pass appropriate orders and will proceed in the matter in accordance with law.

Trial court will decide the issue as to how many witnesses are required to be examined and cross examined afresh in this case.

As discussed above, this petition is disposed of as indicated above.

Certified copy as per rules.

(Tarun Kumar Kaushal) Judge tarun

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