

Mahesh Vs. State

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SooperKanoon Citation : sooperkanoon.com/509232

Court : Madhya Pradesh

Decided On : Jul-14-2005

Reported in : I(2006)DMC193

Judge : W.A. Shah, J.

Acts : Indian Penal Code (IPC) - Sections 498A and 506; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 311 and 482

Appeal No. : Misc. Cr. Case No. 2806 of 2005

Appellant : Mahesh

Respondent : State

Advocate for Def. : None

Advocate for Pet/Ap. : Party-in-person

Disposition : Application rejected

Judgement :

W.A. Shah, J.

1. This is an application under Section 482 of the Code of Criminal Procedure (Code only, for short hereafter). The applicant is facing a criminal trial in the Court of Judicial Magistrate, First Class, Khachrod for offences punishable under

Sections 498A and 506 of the I.P.C. The prosecutrix Smt. Indira Shrivastava, wife of the applicant and their daughter Atita Shrivastava were examined as prosecution witnesses. Allegedly the defence Counsel has withdrawn himself from defending the accused-applicant, therefore, the applicant himself cross-examined them out due to sentimental reason he could not control himself thus there was a lack of needed effective cross-examination. The applicant then moved the learned Trial Magistrate under Section 311 of the Code for recalling of the above witnesses for further cross-examination. The learned Magistrate refused to accede to the said prayer. The applicant, therefore, went in revision. The applicant failed to find favour with the Revisional Court also. Hence, this application.

2. Section 311 of the Code reads as under:

311. Power to summon material witness, or examine person present.--Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and, re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

3. Looking to the above wordings of Section 311 of the Code, a party is not conferred any right to recall any witness for cross-examination. Record shows that the applicant in his application before the Trial Magistrate did not supply him the subject matter for the proposed further cross-examination. In these circumstances it was not possible for the learned Trial Magistrate to utilise the powers conferred upon him under Section 311 of the Code for the requested benefit of the applicant. Therefore, the refusal by the learned Magistrate to act on the said application of the applicant does not suffer from any illegality or material irregularity. The same has thus rightly been confirmed by the learned Revisional Court.

4. In view of the above matter, this application has no merit. It is accordingly summarily rejected.

