

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 9th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 54730 of 2023

BETWEEN:-

VEER SINGH S/O SHRI RAM CHARAN
GURJAR, AGED ABOUT 36 YEARS,
VILLAGE SAKONIYA RAGHOGARH PS
RAGHOGARH GUNA (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI SIDDHARTH SIJORIYA - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION
RAGHOGARH, DISTRICT GUNA
(MADHYA PRADESH)

.....RESPONDENT

(BY SHRI RAJEEV UPADHYAY - PUBLIC PROSECUTOR)

*This application coming on for hearing this day, the court passed
the following:*

ORDER

With consent heard finally.

1. The present petition under Section 482 of the Cr.P.C. has been filed by the petitioner against the order dated 25.10.2023 passed by the Special Judge, SC/ST Act, Raghogarh, District Guna, whereby the application under Section 311 of the Cr.P.C. preferred at the instance of the petitioner for calling the witnesses has been rejected.

2. Precisely stated facts of the case are that on 15-04-2018 a complaint was made by the complainant against the petitioner and other persons stating that complainant alongwith Rohit, Rajesh and Tulsiram went to river for bathing where petitioner alongwith his family members came there and started abusing and beating him with sharp weapons, thereafter they went to the police station Raghogarh where FIR has been lodged vide Crime No.171/2018 for the offence under Sections 147, 148, 149, 307, 323, 294 of the IPC and Sections 3(2) (v-a), 3(1)(R) of the Atrocities Act against the petitioner. Another FIR has been lodged at the instance of present petitioner against the complainant vide Crime No.173/2018 registered at Police Station Raghogarh, District Guna for offence under Sections 294, 323, 324, 506 of 34 of the IPC.

3. It is the submission of learned counsel for the petitioner that charge-sheet has been filed by the police in respect of both crime numbers, thereafter, court below took cognizance and trial has been started in both cases. Special Public Prosecutor filed an application under Section 311 of the Cr.P.C. for calling the witness which was allowed by the trial court. Present petitioner who is accused in Crime No.171/2018 also filed an application under Section 311 of the Cr.P.C. in relation to the cross case vide Crime No.173/2018 for calling some witnesses namely D.P.S. Chauhan (Inspector), Ravindra Chauhan (Sub-Inspector) and Jaynarayan Sharma (Sub-Inspector) who happens to be the important witnesses in their defence. The said application filed by the petitioner and other accused persons is dismissed, therefore, petitioner is before this Court.

4. Learned counsel for respondent/State opposed the prayer. According to counsel, in the present case when petitioner as defence witness already appeared before the trial Court and given his evidence

then calling Investigating Officer would be a futile exercise. He supported the impugned order. He prayed for dismissal of the petition.

5. Heard the learned counsel for the parties at length and perused the documents appended thereto.

6. This is a case in which petitioner is facing trial as accused (in Crime No.171/2018) and in one case he is complainant (Crime No.173/2018). Matter is at the stage of evidence for defence. Section 243 of Cr.P.C. provides such mechanism. Scheme of Section 243 of Cr.P.C. indicates that defence/accused can produce his evidence and it nowhere bars the Investigating Officer of cross-case to appear on behalf of accused in the case in which he is complainant so that truth can come to the fore as it would help the cause of justice to the extent where his act vicarious or individual or the extent of role would be determined. The judgment of Apex Court in the case of **T.Nagappa vs. Y.R. Muralidhar, 2008 (5) SCC 633**, wherein it has been held that an accused has a right to fair trial and this is his fundamental right as enshrined under Article 21 of the Constitution of India. If accused intends to bring a witness in his defence and does not intend to protract the trial or his prayer is not vexatious then in the interest of justice his prayer ought to be allowed. One judgment of Bombay High Court is also available in the case of **Kamlakar Atmaram Kadu and Ors. vs. State of Maharashtra, 2000 (2) MPLJ 106**. In the said case, prosecution given up the evidence of Investigating Officer, and therefore, to bring truth before the Court, an application was moved by accused under Section 243 of Cr.P.C. and same was allowed.

7. From the perusal of documents appended with the petition, it is reflected that there are two cases wherein in one case petitioner as accused (Crime No.171/2018) and in another case petitioner is complainant (Crime No.173/2018). In Crime No.171/2018, an application

preferred at the instance of Special Public Prosecutor for calling the witnesses has already been allowed whereas application preferred by the petitioner seeking same prayer has been rejected by the trial court. Both the trials are going on simultaneously before the trial court.

8. Petitioner intends to bring the witness to substantiate his position in the case whereby exact nature of individual role or motive or nature of allegation may get some factual benefits whereby he is facing trial as accused. In the process, justice would be the ultimate beneficiary because by this process truth may come about the exact nature of incident. It would not cause any dent to the prosecution because that aspect must have been clarified by the accused while appearing in the witness box as defence witness.

9. Since in the present case, petitioner is accused and witness has already been recalled while allowing the application under Section 311 of Cr.P.C. of Special Public Prosecutor in Crime No.171/2018, therefore, no prejudice would be caused in allowing the application preferred by the petitioner.

10. Therefore, in the considered opinion of this court, in order to prevent the miscarriage of justice and in view of the ultimate goal of justice, impugned order passed by the trial court is hereby quashed. Petition preferred by the petitioner stands allowed.

11. Trial court is directed to call relevant witnesses as sought to be called by the petitioner in his application for deposition on the next date of hearing.

12. With the aforesaid, the present petition **stands disposed of.**

(ANAND PATHAK)
JUDGE