

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1523 of 2020

Ashok Kumar Sharma @ Ashok Sharma, aged about 56 years, son of Ghanshyam Sharma, resident of Main Road, Ghatsila, P.O. and P.S. Ghatsila, District-East Singhbhum (Jharkhand) Petitioner

Versus

The State of Jharkhand Opp. Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :Mr. Kaushik Sarkhel, Advocate
 For the State : Mrs. Vandana Bharti, Spl. P.P.

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04/Dated: 28/02/2022

Heard Mr. Kaushik Sarkhel, learned counsel for the petitioner and Mrs. Vandana Bharti, learned counsel for the State.

2. The present petition has been filed for quashing of order dated 23.01.2020 in connection with Ghatsila P.S. Case No. 07/2006, corresponding to S.T. No. 323A/13 whereby petition under section 311 Cr.P.C. filed by the petitioner to recall P.W.1, has been rejected, pending in the Court of learned District & Additional Sessions Judge-II, Ghatsila.

3. Mr. Kaushik Sarkhel, learned counsel for the petitioner submits that on 23.01.2020 P.W. 1 was present before the court in 1st half through Video Conferencing from Midnapur jail and the counsel for the accused-petitioner was not present on the same day in 1st half and P.W. 1 was discharged. He further submits that on the same day at 3. 40 P.M., a petition was filed to recall P.W. 1 which has been rejected. According to him, the said petition to recall the P.W. 1 has been filed as the father of the counsel of the petitioner was ill and for his treatment, the counsel for the petitioner was out of station in 1st half. He further submits that inspite of that the said order has been passed.

4. Mrs. Vandana Bharti, learned counsel for the State submits that there is no illegality in the impugned order.

5. It is an admitted fact that on the same day in 2nd half, petition for recalling the P.W.1 was filed on the ground that the counsel for the petitioner

was out of station for treatment of his father in 1st half. Only after hearing the petitioner, on the same day without assigning any reason, the petition has been rejected. It is not a case that the petitioner tried to fill up lacuna. The petitioner is having right to examine P.W. 1.

6. Accordingly, impugned order dated 23.01.2020 passed in connection with Ghatsila P.S. Case No. 07/2006, corresponding to S.T. No. 323A/13 whereby petition under section 311 Cr.P.C. filed by the petitioner to recall P.W.1, has been rejected, is hereby quashed.

7. The matter is remitted back to the concerned court. The P.W.1 shall be recalled by the concerned court and the date shall be fixed for cross-examination of P.W. 1 by the accused-petitioner within a week from the date of receipt/production of a copy of this order. If the accused failed to cross examine the P.W. 1 on the date fixed by the court below, no further opportunity shall be provided to the accused to cross examine the P.W.1.

8. With the above observation and direction, this criminal miscellaneous petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/