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THE HIGH COURT OF MADHYA PRADESH, INDORE BENCH

SINGLE BENCH

Miscellaneous Criminal Case No. 35901-2021

Sachin s/o Dinesh Parmar

vs.

State of Madhya Pradesh

Coram :

Hon'ble Shri Justice Subodh Abhyankar

Ms. Sonali Goyal, learned counsel for the applicant.

Shri Valmiki Shakargayen, learned Govt. Advocate for the
respondent/State.

Whether approved for reporting : **Yes**

ORDER (ORAL)

(Passed on 30th of July, 2021)

1. This Miscellaneous Criminal Case has been filed by the petitioner under Section 482 of the Cr.P.C. being aggrieved by the order dated 6.1.2021 passed by the learned IIIrd Additional Sessions Judge, Barwah in S.T.No.116/2013 whereby the right of the petitioner/accused to cross examine the Investigating Officer has been closed.

2. Brief facts giving rise to the present petition are that the petitioner is facing the trial for offence under Sections 342, 366, 376 of the IPC in the Court of IIIrd Additional Sessions Judge, Barwah, District Khargone wherein the Investigation Officer,

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P.W./15 D.K. Tiwari was being examined and in the course of his cross examination on 6.1.2021, a question was asked by the counsel appearing of the petitioner/accused which, according to the learned Judge of the trial court, was a matter of argument only and was not relevant. Hence, on this question the learned Judge of the trial court directed the counsel appearing for the petitioner not to ask such irrelevant questions, otherwise his right to cross examine the witness can be closed. However, when the subsequent question was asked by the counsel for the petitioner, which according to the learned Judge was also irrelevant, the learned Judge closed the right of the petitioner/accused to cross examine the witness vide impugned order dated 6.1.2021.

3. Counsel for the petitioner has submitted that the questions which were put to the Investigating Officer were relevant and even otherwise the learned Judge of the trial court ought not to have closed the right of the petitioner which is a valuable right and all the more important in a serious offence like Section 376 of IPC. Thus, it is submitted the impugned order be quashed and the learned Judge of the trial Court be directed to allow the petitioner to cross examine the Investigating Officer.

4. On the other hand, counsel for the respondent/State has opposed the prayer and it is submitted that no illegality has been committed by the learned Judge of trial Court in passing the

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impugned as it is necessary for the court also to curb such practice of asking irrelevant questions in the cross examination.

5. Heard learned counsel for the parties and perused the record.

Before dealing with the merits of the case, it would be germane to refer to the question which led to the controversy and Judge's

response to the same vide order dated 6.1.2021, it read as under:-

“ 13. प्रश्न— सचिन के नाम पर गाड़ी नहीं है?

नोट— मेमोरेण्डम में यह तथ्य आया है कि गाड़ी दीपक के नाम पर है। जो प्रश्न पुछा गया वह मेटर ऑफ आर्ग्युमेन्ट है, मेटर ऑफ क्रास एक्जामिनेश नहीं है। अतः पुछने की अनुमति नहीं दी जाती साथ ही बचाव पक्ष के विद्वान अधिवक्ता को निर्देशित किया जाता है कि वह सुसंगत प्रतिपरीक्षण करे, असंगत प्रतिपरीक्षण किये जाने पर प्रतिपरीक्षण का अवसर समाप्त किये जाने पर विचार किया जाएगा।

प्रश्न— गाड़ी सचिन से तो जप्त नहीं हुई?

नोट— आदेश पत्रिका में वर्णित कारण से प्रतिपरीक्षण का अवसर समाप्त किया गया। ”

Thereafter the following impugned order was passed by the learned Judge on the same day:-

“ **06.01.2021**

राज्य द्वारा एजीपी।

आरोपी सचिन सह, शेष द्वारा श्री श्यामसिंह पंवार अधिवक्ता उपस्थित।

साक्षी डी.के. तिवारी उपस्थित। साक्षी को शपथ दिलाई जाकर उसका प्रतिपरीक्षण प्रारंभ किया गया। बचाव पक्ष के विद्वान अधिवक्ता ने न्यायालय द्वारा दिये गए निर्देशों का पालन नहीं किया और मना करने के बावजूद असंगत प्रश्न किया, जिस कारण साक्षी डी.के. तिवारी से बचाव पक्ष का प्रतिपरीक्षण का अवसर समाप्त कर साक्षी को उन्मुक्त किया गया।

साक्षी पिन्टू आरक्षक ज्योति, आरक्षक रामसिंग को जरिये समंस तलब किया जावे।

प्रकरण अभियोजन साक्ष्य हेतु दिनांक 25.01.2021 को पेश हो।

पुनश्च: दिनांक 06.01.2021

राज्य द्वारा एजीपी उपस्थित।

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आरोपी सचिन सह, शेष द्वारा श्री एस.एस. पंवार अधिवक्ता उपस्थित।

आरोपी पूजा बाई का हाजिरी माफी आवेदन निराकृत करने से छूट गया है, जिस कारण उसका निराकरण किया जा रहा है।

पूजाबाई का हाजिरी माफी का आवेदन पेश, कारण उचित होने से बाद विचार स्वीकृत, उपस्थिति जरिये अधिवक्ता मान्य की जाती है।

प्रकरण पूर्ववत अभियोजन साक्ष्य हेतु दिनांक 25.01.2021 को पेश हो। ”

6. A bare perusal of the aforesaid proceeding and the subsequent order passed by the learned Judge of the trial court leaves no manner of doubt that viewed from any angle, the impugned order cannot be sustained in the eyes of law as it defeats the entire purpose of the right of an accused to cross examine the witness. It is apparent that only one question was asked by the counsel for the petitioner prior to the impugned order was passed and regardless of its admissibility or relevance, the learned Judge of the trial court ought not to have closed the right of the petitioner to cross examined the witness. It is trite that cross-examination is the only tool available to a defence lawyer to test the veracity of a prosecution witness, it is the only way out to an accused to clear his name from the alleged offence hence his right to cross examine a witness cannot be curtailed in such a cavalier manner.

7. Having said so, this court is also of the considered opinion that cross-examination of a witness is an art which, though, can be performed by any lawyer in a black coat but it is very difficult to

master the same as it takes years of hard work and exposure to trials that one can have some expertise in it. It is only through a long and hard exercise of *trial and error method* that a lawyer learns the art of cross examination but if the judge presiding over the matter is impatient or edgy, it not only culminates into an order like the impugned one, but also hampers the overall learning process or grooming of a lawyer who, before becoming an expert trial court lawyer, is bound to falter many a times by asking irrelevant or inadmissible questions to a witness in the box. Thus, it is expected from the judges of the Trial court to be patient and tolerant in their approach towards the Trial Court lawyers during the examination of witnesses.

8. In the considered opinion of this Court, if the learned Judge was of the opinion that despite his warnings the counsel appearing for the petitioner has continued to ask irrelevant questions, then other modes were also available to the learned Judge of the trial court as are prescribed in the Evidence Act, 1872 from Sections 146 to 152 and in some exceptional cases, the learned judge may also resort to the measure like imposing cost on the counsel for repeatedly and recklessly asking the irrelevant and inadmissible questions but, instead of taking resort of such procedure, the learned Judge has closed the right of the accused to cross examine the witness, which cannot be countenanced in the

eyes of law. WWW.LIVELAW.IN

9. In view of the same, the impugned order being contrary to law cannot be sustained and is hereby quashed. The learned Judge of the trial Court is also directed to recall the Investigating Officer, P.W.15 D.K. Tiwari and allow the counsel for the petitioner to cross-examine him. It is made clear that if any irrelevant question is asked by the counsel appearing for the petitioner, the learned Judge would be at liberty to take appropriate steps as are permissible under law.

With the aforesaid, the present M.Cr.C. stands allowed.

Certified copy, as per rules.

**(SUBODH ABHYANKAR)
JUDGE**

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THE HIGH COURT OF MADHYA PRADESH,INDORE BENCH

Single Bench : Hon'ble Shri Justice Subodh Abhyankar

Miscellaneous Criminal Case No.35901/2021

(Sachin s/o Dinesh Parmar vs. State of Madhya Pradesh)

1	Case No.	M.Cr.C.No.35901 of 2021
2	Parties Name	Sachin s/o Dinesh Parmar vs. State of Madhya Pradesh
3	Date of Order	30 th of July, 2021
4	Bench constituted of Hon'ble Justice	Single Bench Hon'ble Shri Justice Subodh Abhyankar
5	Order passed by	Hon'ble Shri Justice Subodh Abhyankar
6	Whether approved for reporting	Yes
7	Name of counsel for the parties	Ms. Sonali Goyal, learned counsel for the applicant. Shri Valmiki Shakargayen, learned Govt. Advocate for the respondent /State.
8	Law laid down	1. It is trite that cross-examination is the only tool available to a defence lawyer to test the veracity of a prosecution witness, it is the only way out to an accused to clear his name from the alleged offence hence his right to cross examine a witness cannot be curtailed in a cavalier manner. 2. Cross-examination of a witness is an art which, though, can be performed by any lawyer in a black coat but it is very difficult to master the same as it takes years of hard work and exposure to trials that one can have some expertise in it. It is only through a long and hard exercise of <i>trial and error method</i> that a lawyer learns the art of

		<p>cross examination but if the judge presiding over the matter is impatient or edgy, it not only culminates into an order like the impugned one, but also hampers the overall learning process or grooming of a lawyer who, before becoming an expert trial court lawyer, is bound to falter many a times by asking irrelevant or inadmissible questions to a witness in the box. Thus, it is expected from the judges of the Trial court to be patient and tolerant in their approach towards the Trial Court lawyers during the examination of witnesses.</p> <p>3. In the considered opinion of this Court, if the learned Judge was of the opinion that despite his warnings the counsel appearing for the petitioner has continued to ask irrelevant questions, then other modes were also available to the learned Judge of the trial court as are prescribed in the Evidence Act, 1872 from Sections 146 to 152 and in some exceptional cases, the learned judge may also resort to the measure like imposing cost on the counsel for repeatedly and recklessly asking the irrelevant and inadmissible questions but, instead of taking resort of such procedure, the learned Judge has closed the right of the accused to cross examine the witness, which cannot be countenanced in the eyes of law.</p>
9	Significant paragraph	06 to 08

**(SUBODH ABHYANKAR)
JUDGE**

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