

02-08-2023

**Orders on Application filed under
Section 242(3) of Cr.P.C.**

This application is filed by the learned counsel for accused No.1 to 3 seeking permission to defer the cross examination of CW1 to 4 till the completion of their chief examination in full and permit to cross examine thereafter, in the interest of justice and equity.

2. In the application it has been contended that CW1 to 4 being residents of Bengaluru are the relative witnesses, who will speak the same set of facts. If the accused cross-examines before completion of their chief examination, the prosecution will cover up all the lapses and will improve the case. If the defence is revealed at the initial stage itself, the same will cause irreparable damage to the case of accused persons. If the application is not allowed, the accused persons would be put to great hardship and on the other hand, no prejudice or inconvenience would be caused to the other side. Hence prayed to allow the application.

3. On the other hand, the learned Sr.APP has filed objections to the application contending that the application is not maintainable either in law or on facts. The application is filed by accused just to harass the witnesses and drag the proceedings. If the accused is given time to cross-examine the above stated witnesses, the facts stated in chief examination may be forgotten and there is every possibility of fatality to the substance of case. In the decision dated 14-08-2008 in 2009 Cri.L.J. 1215 Shamoon Ahmed Sayed and Another V/s Intelligence Officer, our own Hon'ble High Court has opined that the witnesses have to depose as per the statement given before police and not otherwise, so also the witnesses shall be first examined in chief, then cross-examined and thereafter re-examined, as per the provisions of Section 137 and 138 of Indian Evidence Act and only because the defence of accused would be disclosed to other witnesses, while cross-examining one of the witness, seeking to cross-examine all the witnesses after completion of their chief examination, is not lawful. That the accused have not made out any reasonable grounds to allow the application. Hence prayed to reject the application.

4. Heard the arguments and perused the records.

5. The only point that arises for my consideration is-
Whether the application is liable
to be allowed?

6. My answer to the above point is in the negative for
the following-

R E A S O N S

7. On perusal of records, it reveals that the I.O. has charge sheeted accused No.1 to 3 for the offences punishable under Section 498(A) read with 34 IPC and Sec.3, 4 of D.P. Act. I have carefully gone through the facts and circumstances of case coupled with allegations made against accused. During arguments the counsel for accused and learned Sr.APP have reiterated their stands taken in the respective application and objections.

8. It is true that Section 242(3) Cr.P.C. provides that Magistrate may permit cross-examination of witnesses to be deferred until any other witnesses are examined. However in this case, whether deferring the cross-examination of CW1 to 4 till their completion of chief examination is necessary or not has to be seen.

9. In this case, CW1 Smitha is examined as PW.1 on 16-05-2023 and her cross-examination was deferred at the request of counsel for accused. The stage of case is recording the evidence of other witnesses and cross-

examination of PW.1. At this stage, the counsel for accused has filed this application praying to defer the cross-examination of CW1 to 4 till completion of their examination in chief. It is the contention of learned counsel for accused that if he cross examines CW1 to 4 being relative witnesses before completion of their chief examination, the prosecution will cover up all the lapses and improve the case and that the defence of accused would be revealed, which will hamper the case of defence and the accused will be put to irreparable loss.

10. Admittedly, this is a dowry harassment case against accused of the year 2016. There are nine witnesses cited in the charge sheet and CW7 to 9 are official witnesses. Already CW1 is examined as PW1 and in order to record the chief examination of CW2 to 4, the same might require more time. In the considered opinion of court, it is not feasible CW1 to 4 to wait for their cross examination till completion of chief of all the said witnesses.

11. At this juncture, it is profitable to mention the decision of Hon'ble Apex Court reported in **(2019) 13 SCC 297 State of Kerala Vs Rasheed**, wherein it is held that while deciding the application under Section 231(2) of Cr.P.C., balance must be struck between rights of accused and prerogative of prosecution to lead evidence and the following factors must be kept in consideration:

- i. possibility of undue influence on witnesses
- ii. possibility of threats to witnesses
- iii. possibility that non-deferral would enable subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent defence strategy
- iv. possibility of loss of memory of witnesses, whose examination in chief has been completed and
- v. occurrence of delay in trial and non-availability of witnesses, if deferral is allowed.

12. So, looking to the ratio held in the above case, it is not a fit case to defer the cross examination of CW1 to 4 till completion of their chief examination in full and permit the accused to cross examine thereafter. Even though in the above decision it is mentioned about the Session trial case, but the ratio is aptly applicable to the case in hand. So if we consider the factors as enshrined in the above decision the accused have not at all made out any reasonable grounds to allow the application. The application is devoid of merits. Hence, I answer the above point in the negative and proceed to pass the following:

ORDER

The application filed by learned counsel for accused No.1 to 3 under Section 242(3) of Cr.P.C. is hereby rejected.

**Chief Metropolitan Magistrate,
Bengaluru.**