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**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC-18784-2022**  
**Vipin Rajput Vs. State of MP**

**Gwalior, Dated : 13/04/2022**

Shri Sushil Goswami, Counsel for the applicant.

Shri Rajeev Upadhyay, Counsel for the State.

This application under Section 482 of CrPC has been filed against the order dated 05.04.2022 passed by Special Judge (POCSO Act), Datia in S.C. No.40/2016, by which application filed by the applicant under Section 311 of CrPC has been rejected.

2. The necessary facts for disposal of present application, in short, are that on 28.12.2021, trial was fixed for examination of Ranjana Chauhan. Her examination-in-chief was recorded, however, a prayer was made by the applicant that since the lawyers are abstaining from work, therefore, one more opportunity may be granted to cross-examine her. Accordingly, cross-examination of the witness was deferred with a specific observation that on the next date of hearing, the applicant shall cross-examine her and the case was fixed for 11.01.2022. On 11.01.2022 the prosecution witness Ranjana Chauhan was present, but a pass-over was sought on behalf of the applicant. Accordingly, the case was taken up at 05:15 PM, however, counsel for the applicant refused to cross-examine her. Accordingly, the right of the applicant to cross-examine Ranjana Chauhan (PW-18) was closed. The applicants filed an application under Section 311 of CrPC which has been dismissed by the impugned order dated 05.04.2022.

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3. Challenging the order passed by the Court below, it is submitted by the counsel for the applicant that the prosecution witness Ranjana Chauhan (PW-18) is the Investigating Officer and is an important witness and in case, if the applicant is deprived of his right to cross-examine her, then it would cause irreparable loss to the applicant. It is further submitted that it is clear from the note appended in the deposition-sheet of the prosecution witness Ranjana Chauhan (PW-18) that on 28.12.2021 the lawyers were abstaining from work and it is also clear from the order dated 11.01.2022 that counsel for the applicant had refused to cross-examine her, therefore, one last opportunity may be granted to cross-examine Ranjana Chauhan (PW-18) and since she could not be cross-examined only due to the fault on the part of the counsel for the applicant, therefore, the counsel for the applicant is ready and willing to not only pay the expenses to the prosecution witness Ranjana Chauhan (PW-18), but is also ready and willing to pay the compensation out of his own pocket so that the valuable rights of the accused can be saved.

4. Per contra, counsel for the State has vehemently opposed the submissions made by the counsel for the applicant. It is submitted that the charge-sheet was filed on 30.11.2016 and the charges could be framed only on 08.02.2017 because at least on four occasions, counsel for the applicant had sought time to argue on the question of framing

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of charges. Furthermore, on 17.07.2017 Vinod Kumar (PW-1) had appeared, but his examination was deferred at the request of counsel for the applicant. On 28.12.2021 prosecution witness Ranjana Chauhan (PW-18) was present, but her cross-examination was not done as the lawyers were abstaining from work. On 29.12.2021 also counsel for the applicant did not cross-examine Ranjana Chauhan (PW-18). Thereafter, on 11.01.2022 also counsel for the applicant did not cross-examine Ranjana Chauhan (PW-18). The trial is more than five years old and speedy trial is not only the fundamental right of an accused, but also a fundamental right of the victim, which cannot be harassed at the sweet will of the applicant.

5. Heard the learned counsel for the parties.

6. From the impugned order, it is clear that on 28.12.2021 Ranjana Chauhan (PW-18) had appeared and her examination-in-chief was recorded and in spite of various judgments passed by the Supreme Court as well as High Court, by which strike by the lawyers has been declared to be illegal, the lawyers were abstaining from work. Thereafter, at the request of the applicant, cross-examination of Ranjana Chauhan (PW-18) was deferred for the next date and on the next date, i.e., 29.12.2021 counsel for the applicant did not cross-examine her. The case was then adjourned to 11.01.2022 and on the said date also, counsel for the applicant did not cross-examine

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Ranjana Chauhan (PW-18). Thus, it is clear that not only, the lawyers were abstaining from work contrary to the judgment passed by the Supreme Court in the case of **Ex-Capt. Harish Uppal Vs. Union of India and another** reported in (2003) 2 SCC 45, but the counsel for the applicant was out and out to harass the prosecution witness Ranjana Chauhan (PW-18) as he did not cross-examine her in spite of an opportunity given by the Trial Court on 29.12.2021 and 11.01.2022.

7. It is submitted by the counsel for the applicant that in fact on 29.12.2021, the case was not fixed for cross-examination of Ranjana Chauhan (PW-18) but in fact Ranjana Chauhan (PW-18) appeared on her own, therefore, the counsel for the applicant did not cross-examine her. However, he fairly conceded that the copy of order sheet dated 29.12.2021 has not been filed.

8. Now the only question of consideration is as to whether one more opportunity can be granted to the applicant to cross-examine Ranjana Chauhan (PW-18) or not ?

9. The Supreme Court in the case of **Ex-Capt. Harish Uppal (supra)**, has held as under:-

**“20.** Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar

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Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh case* [(1999) 1 SCC 37] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since *Ramon Services case* [(2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152] that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.”

10. Thus, it is clear that the Advocates would be answerable for the consequences suffered by the clients if the non-appearance was solely on the ground of a strike call. On 28.12.2021 the prosecution witness was not cross-examined because the lawyers were abstaining from work. The Bar cannot justify its strike merely by saying that they are not on strike, but they are abstaining from work. Strike and abstaining from work is one and the same thing. In spite of the fact that the lawyers were on illegal strike by calling it as abstaining from work, the Trial Court fixed the case for the next date, i.e., 29.12.2021

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for cross-examination of prosecution witness Ranjana Chauhan (PW-18). However, in spite of that, the counsel for the applicant did not cross-examine her. Thereafter, the case was again fixed for 11.01.2022 and on the said date also, counsel for the applicant did not cross-examine her.

11. It is submitted by the counsel for the applicant that since the trial involves serious disputed questions of facts and law, therefore, counsel for the applicant was required to make preparation for cross-examining the prosecution witness and, therefore, he could not cross-examine her on 11.01.2022 and further it was already 5:15 PM.

12. The submission made by the counsel for the applicant is not acceptable. The Trial is pending since 08.02.2017, i.e., the date on which the charges were framed. Even after a long five years of pendency of trial, if the counsel for the applicant has not prepared the case, then only he is to be blamed.

13. So far as the contention of the counsel for the applicant that since it was already 5:15 PM, therefore, he did not cross-examine her is concerned, it is clear from the order sheet of the Trial Court that the witness had appeared at 3:00 PM but pass over was sought by the counsel for the applicant. If the Court had accommodated the counsel by passing over the matter, then the counsel cannot make a complaint that since working hours were over, therefore, he had a right to refuse

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to cross-examine the witness.

14. Under these circumstances, this Court is unable to accept the contention of the counsel for the applicant that the counsel is ready to pay the compensation as well as expenses to the witness out of his own pocket. If the applicant has engaged a lawyer who is not serious towards his profession, then the applicant has a remedy to approach the Bar Council and if the counsel for the applicant was working as per the instructions of the applicant, then the applicant cannot run away from his liability of not cross-examining the prosecution witness Ranjana Chauhan on 28.12.2021, 29.12.2021 and 11.01.2022.

15. Since no jurisdictional error could be pointed out by the counsel for the applicant, therefore, the application fails and is hereby **dismissed**.

16. However, liberty is granted to the applicant that in case, if his counsel had acted contrary to his instructions and did not cross-examine the witness in spite of his clear instructions, then he shall have a remedy of filing a civil suit for claiming compensation. He shall also have a remedy to approach the Bar Council against his local counsel for abstaining from work in spite of the law laid down by the Supreme Court in the case of **Ex-Capt. Harish Uppal (supra)**.

**(G.S. Ahluwalia)**  
**Judge**

Abhi