

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2084 OF 2013
(Arising out of SLP(Crl.) No.10045/2013)

MANOHAR PRAJAPAT

Appellant(s)

:VERSUS:

STATE OF MADHYA PRADESH

Respondent(s)

O R D E R

Leave granted.

2. We have heard learned counsel for the appellant and the learned counsel for the State of Madhya Pradesh. The appellant is an accused in S.T. No.461 of 2010 pending on the file of Additional Sessions Judge, Indore. He is facing charges under Sections 294 & 307 read with Section 34 of the Indian Penal Code. The appellant's case is that on the date of incident he was not in Indore. According to him, he was in Nimach District. He has pleaded alibi. In support of his plea the appellant wanted to examine nine witnesses from Nimach. He, therefore, moved an application for summoning those witnesses. It appears from the order dated

11.10.2013 passed by the High Court that the High Court directed the Trial Court to issue notices to the concerned witnesses for their appearance before the Court within a period of one month from the date of the order i.e. 11.10.2013. The case of the appellant is that from 12.10.2013 to 17.10.2013 the Courts were closed because of public holidays. The appellant obtained the certified copy of the order dated 11.10.2013 on 18.10.2013 and moved the Trial Court on 30.10.2013. The Trial Court issued summons to the nine witnesses on 30.10.2013 for their appearance before it on 11.11.2013. It appears that on 11.11.2013 out of nine witnesses, three witnesses appeared and they were examined by the Trial Court. For summoning the remaining six witnesses an application was made by the appellant on 12.11.2013 before the learned Sessions Judge which was rejected on the same date on the ground that the High Court by its order 11.10.2013 had given the appellant one month's time. However, the appellant had not taken the required steps within that period. The Trial Court observed that in such circumstances, it is not necessary to grant one more opportunity to the appellant to lead defence evidence. Being aggrieved

by the said order the appellant filed criminal revision in the High Court. The High Court by the impugned order refused to interfere with the order dated 12.11.2013 passed by the Trial Court. Hence this appeal by special leave.

3. We are informed that the Trial Court has almost completed the examination of the witnesses and the matter is posted for judgment. It is true that there is some negligence on the part of the appellant. If the appellant had obtained the certified copy of the order dated 11.10.2013 on 18.10.2013, nothing prevented him from moving the Trial Court at the earliest. He chose to wait and moved an application on 30.10.2013. It is this delay on his part that persuaded the High Court to reject his application. We share the anxiety of the High Court. However, we cannot lose sight of the fact that the appellant has pleaded the defence of alibi and wanted to examine some more witnesses in support thereof. In the circumstances, in our opinion, in the interest of justice the appellant needs to be given a last opportunity to examine his defence witnesses which, of course, will be subject to

payment of cost of Rs.5000/-. Hence, the impugned order is set aside and the appeal is allowed. The appellant shall move an application before the Trial Court within one week from today for summoning the rest of the witnesses. On such an application being filed by the appellant, the Trial Court shall issue summons to the said six witnesses and the same shall be served upon them immediately. Examination of these six witnesses shall be completed within a period of one month from the date of service of summons on the witnesses. This entire exercise, however, will be subject to the appellant depositing a sum of Rs.5000/- in the High Court of Madhya Pradesh, Indore Bench which shall be credited to the account of State Legal Services Authority. The appeal is disposed of accordingly.

.....J
(RANJANA PRAKASH DESAI)

.....J
(J. CHELAMESWAR)

New Delhi;
December 11, 2013.