

John Raphael Vs. Mr. M.A. Joy

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Court : Madhya Pradesh

Decided On : Sep-25-2013

Appellant : John Raphael

Respondent : Mr. M.A. Joy

Advocate for Def. : Shri. J.K.Verma

Judgement :

M.Cr.C.No.15497/2012 25.09.2013 The applicant John Raphael is present in person.

Shri J.K.Verma, counsel for the respondent Nos.1, 3 to 5.

It is informed that the respondent No.2 has already been expired.

Heard the learned counsel for the parties.

The applicant has challenged the order dated 26.8.2011 passed by the J.M.F.C.Sagar in Criminal Case No.2175/06, whereby the application under Section 229-A of Cr.P.C.was dismissed.

Also the order dated 25.4.2012 passed by the learned 1st Additional Sessions Judge, Sagar in Criminal Revision No.114/12 is also challenged, whereby the revision against the order dated 26.8.2011 passed by the J.M.F.C.Sagar was dismissed.

The facts of the case, in short are that, the applicant has moved a criminal complaint against the respondents for the offence punishable under Section 500 of IPC and the complaint is pending.

The accused Nos.1 & 3 were not exempted from their attendance before the trial Court under Section 205 of Cr.P.C. The learned J.M.F.C. granted permanent exemption to the accused No.1 on 3.10.2008, but the revisionary Court vide order dated 16.1.2009 set aside that exemption.

On 19.5.2009, the accused Nos.1 and 3 did not appear before the trial Court and therefore, an application for punishment to the accused Nos.1 and 3 under Section 229-A of Cr.P.C. was moved by the applicant.

The trial Court vide order dated 28.6.2011 dismissed the application, whereas the revision filed by the applicant was also dismissed by the revisionary Court.

After considering the submissions made by the applicant and learned counsel for the respondents, looking to the facts and circumstances of the case, it appears that the applicant has a main grievance that the accused Nos.1 and 3 did not appear on 19.5.2009, but no action was taken by the trial Court against them and therefore, they should be punished for their absence.

However, looking to the order sheet dated 8.5.2008, the accused Nos.2, 4 and 5 were granted exemption under Section 205 of Cr.P.C. and thereafter, on 28.8.2008 the accused Nos.1 and 3 appeared before the trial Court.

On 3.10.2008, it was mentioned in the order sheet that the accused Nos.1 and 3 were present and remaining accused were permanently exempted.

On 17.2.2009, the accused Nos.1 and 3 appeared before the trial Court.

On 23.4.2009, it was mentioned that all the accused persons were granted permanent exemption.

On 19.5.2009, the complainant moved an application under Section 446-A of Cr.P.C. On 13.7.2009, the learned J.M.F.C. disposed off the application under Section 446-A of the Cr.P.C. that by confusion, it was mentioned that the accused

Nos.1 & 3 were permanently exempted.

However, they were directed to remain present on 18.8.2009.

It is admitted by the applicant that the accused Nos.1 and 3 appeared before the trial Court on 18.8.2009.

By perusal of the various order sheets, it appears that the accused Nos.1 and 3 were regular in appearing before the trial Court and they did not appear on 23.4.2009 and by mistake, it was mentioned that they were permanently exempted.

However, vide order dated 13.7.2009, the trial Court found that it was a confusion about the presence of the accused Nos.1 and 3 therefore, if the application under Section 446-A of Cr.P.C.was dismissed then, by implied effect of dismissal of that application, it can be said that on 13.7.2009, the trial Court gave an exemption from personal appearance to the accused Nos.1 and 3 for the date 23.4.2009.

Therefore, by order dated 13.7.2009, when an implied exemption was given to the accused Nos.1 and 3 for non- appearance dated 23.4.2009 then, the accused Nos.1 and 3 could not be prosecuted under Section 229-A of Cr.P.C.Similarly, vide order dated 13.7.2009, the trial Court has condoned the non-appearance of the accused Nos.1 and 3 for the dates prior to the date 13.7.2009 and also non-appearance dated 13.7.2009, thereafter the accused Nos.1 and 3 appeared before the trial Court on 18.8.2009.

When non-appearance of the accused is condoned by the trial Court then, the accused cannot be punished under Section 229-A of Cr.P.C.If the entire proceedings are perused then, it would be apparent that the criminal complaint is pending since the year 2006 and instead of production of prosecution's evidence, the applicant is watching only the attendance of the accused persons, who are old and resident of distance place in the State of Kerla.

Under such circumstances, the attitude of the applicant does not appear to be bonafide so that a sympathetic attitude may be adopted with him.

He has moved various applications for each non-appearance of the accused persons in such a manner but he did not produce the prosecution's evidence and he could not complete the prosecution's evidence in last so many years. Under such circumstances, where the non-appearance of the accused Nos.1 and 3 on 13.7.2009 was condoned by the trial Court on the same date without any application then, prima facie, no proceedings under Section 229-A of Cr.P.C. may be prosecuted.

The learned J.M.F.C. as well as the revisionary Court has rightly dismissed the application of the applicant and also the revision.

There is no illegality or perversity visible in the orders passed by both the Courts below.

There is no basis by which the present petition can be accepted.

Consequently, the petition under Section 482 of Cr.P.C. filed by the applicant John Raphael is hereby dismissed.

However, looking to the conduct of the applicant, it appears that the petition filed by the applicant was not expected to be filed and therefore, a cost of `1,000/- (Rupees one thousand) is imposed upon the applicant while dismissing the present petition under Section 482 of Cr.P.C. Copy of the order be sent to the trial Court for information and recovery of the cost.

The cost be recovered and it be deposited before the District Legal Services Authority.

(N.K.GUPTA) JUDGE pnkj

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