

Sandesh Vs. State Of Karnataka

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Court : Karnataka

Decided On : Jan-12-2015

Judge : N. Ananda

Appeal No. : Criminal Petition No. 49 of 2015

Appellant : Sandesh

Respondent : State Of Karnataka

Advocate for Pet/Ap. : Sri. B.Anand

Judgement :

(Prayer: This Crl.P Is Filed Under Section 482 Cr.P.C., Praying To Quash The Order Dated 29.12.2014 Passed In Sc.No.46/2012, On The File Of The Fast Track Court-Ii At Chintamani and Etc.)

1. The petitioner is accused No.1 before the court below.

2. The learned counsel for accused had remained absent during examination of material witnesses for the prosecution (PW1-Prema, PW2-Suresha, PW3-Venkatesha, PW4-Santosh, PW5-Gangamma, PW6-Kadiramma, PW7-Narasimha, PW8-Prakash, PW9-Shiva, PW16-B.Puttabasavaiah, PW17-S.T.Siddalingappa and PW18-Krishnappa. The aforestated witnesses were examined-in-chief on 06.05.2014, 07.05.2014, 01.07.2014, 26.08.2014 and 18.11.2014.

3. On 18.12.2014, accused made an application under section 311 Cr.P.C., to recall the aforestated witnesses, which has been rejected by the learned trial Judge, in terms of the impugned order reading as hereunder:-

"All the accused present.

Objections filed.

Heard both the sides.

The accused persons have filed applications to re-call 11 witnesses for cross-examination. The evidence of the prosecution was closed on 20.11.2014. After that the 1st accused absent twice and the 4th accused remanded about once. When the EP filed for AG is rejected on the same day she was kept present and got the warrant re-called. The statement of the accused persons was recorded on 10.12.2014 and posted for arguments on 18.12.2014. On that day, application for re- calling of 11 witnesses filed. PW's 1 to 9 were examined in the month of May and July. In fact PW1 and 7 were bound over for cross- examination. In-spite of it, the learned counsel for the accused persons failed to cross-examine.

This is an old matter of the year 2012 and altogether 18 witnesses examined. The recalling of 11 witnesses is nothing but retrial, the reasons assigned in the application for re-calling is not bonafide. No reason made out for having not cross-examined the witnesses and for having not filed the application without delay. Hence, the application filed by the accused persons under section 311 of Cr.P.C. is rejected. Arguments by 05.01.2015."

4. The learned counsel for petitioner and learned HCGP submit that learned trial Judge has recorded the statements of accused under section 313 Cr.P.C., and heard the arguments and posted the case for judgment. The accused have challenged the order of rejection of application under section 311 Cr.P.C.

5. I have heard Sri B.Anand, learned counsel for petitioner and learned HCGP for State.

6. Before adverting to the legality or otherwise of the impugned order, it is necessary to refer to the judgment of the Supreme Court, reported in AIR 2000 SC 2017 (in the case of Jagjit Singh Vs. State of Punjab), wherein it is held:-

"37. A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that witnesses are required, whether it is direct evidence or circumstantial evidence. Here are the witnesses who are a harassed lot. A witness in a criminal trial may come from a far-off place to find the case adjourned. He has to come to the Court many times and at what cost to his own-self and his family is not difficult to fathom. It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is maimed; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice. A witness is then not treated with respect in the Court. He is pushed out from the crowded courtroom by the peon. He waits for the whole day and then he finds that the matter adjourned. He has no place to sit and no place even to have a glass of water. And when he does appear in Court, he is subjected to unchecked and prolonged examination and cross-examination and finds himself in a hapless situation. For all these reasons and others a person abhors becoming a witness. It is the administration of justice that suffers. Then appropriate diet money for a witness is a far cry.

Here again the process of harassment starts and he decides not to get the diet money at all. High Courts have to be vigilant in these matters. Proper diet money must be paid immediately to the witness (not only when he is examined but for every adjourned hearing) and even sent to him and he should not be left to be harassed by the subordinate staff. If the criminal justice system is to be put on a proper pedestal, the system cannot be left in the hands of unscrupulous lawyers and the sluggish State machinery. Each trial should be properly monitored. Time has come that all the Courts, district Courts, subordinate Courts are linked to the High Court with a computer and a proper check is made on the adjournments and recording of evidence. The Bar Council of India and the State Bar Councils must

play their part and lend their support to put the criminal system back on its trial. Perjury has also become a way of life in the law Courts. A trial judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint. Perhaps law needs amendment to clause (b) of section 340(3) of the Code of Criminal Procedure in this respect as the High Court can direct any officer to file a complaint. To get rid of the evil of perjury, the Court should resort to the use of the provisions of law as contained in Chapter XXVI of the Code of Criminal Procedure."

7. What has been held in the aforecited judgment is aptly applicable to the facts of the instant case.

8. The petitioner and other accused (accused 1 to 4) are on bail. They should have co-operated with the trial court, in a way, they have misused bail granted to them. The trial court cannot decide the case on merits on the available evidence. It is necessary to provide opportunity to learned counsel for accused to cross-examine the aforestated witnesses, at the same time, it is necessary to curtail the unscrupulous attitude of the accused.

9. In the circumstances, I deem it proper to pass the following:-

ORDER

The impugned order is set aside. The petitioner and other accused shall appear before the court below on 13.01.2015 and make an application to recall the witnesses.

The learned trial Judge shall cancel bail and remand the accused to judicial custody. The learned trial Judge shall accept the application to recall the witnesses on payment of costs of Rs.1,000/- to each of the witnesses by the accused.

The learned trial Judge shall secure the witnesses forthwith and conclude the trial on day-to-day basis.

A copy of this order shall be made available to learned HCGP to communicate the same to the court below through Sri Sadananda, PSI of Chintamani Police Station, who is present before court.

The petition is disposed of with these directions.

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