

S. Madhu and Others Vs. State

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Court : Karnataka

Decided On : Oct-14-2014

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No.2687 of 2014

Appellant : S. Madhu and Others

Respondent : State

Judgement :

(Prayer: This CrI.P Is Filed Under Section 482 Of The Criminal Procedure Code Praying To Quash The Order Dated 11.04.2014 On The File Of V Addl. District And Sessions Judge, Devanahalli, In S.C. No.285/2012 And To Pass Any Appropriate Orders In The Facts And Circumstances Of The Case, In The Interest Of Justice And Equity.)

1. The present petition is filed seeking setting aside of the order passed by the learned V Addl. District and Sessions Judge, Bangalore Rural District (sitting at Devanahalli) in S.C. No.285/2012 dated 11.04.2014 in rejecting the application filed by accused Nos.1 to 3 in the said case under Section 311 of the Criminal Procedure Code.

2. I have heard the learned counsel for petitioners as also the learned High Court Government Pleader in this regard.

3. The order of the trial Court discloses that accused Nos.1 to 5 were chargesheeted for the offence punishable under Section 395 of the Indian Penal Code. On 30.09.2013, the evidence before the trial Court started and PWs.1 and 2 were examined and subsequently, on 19.02.2014, PWs.4 and 5 were examined. The records disclose that accused themselves sought for time to cross-examine PWs.1 to 3 at a stretch after completion of their examination-in-chief. Accordingly, the trial Court accommodated the accused in that regard and the case was adjourned to 23.10.2013. On that day, evidence of PW.2 was recorded and again, the case was adjourned to 26.11.2013. On that day, the witnesses, PWs.1 and 2 were absent. Hence, once again, the Court issued summons and matter was adjourned to 23.12.2013 and on that day, learned counsel for accused Nos.1 to 3 took time to cross-examine PWs.1 and 2 on the ground of ill-health. Again, the Court granted time and posted the case to 13.01.2014. On that day, PWs.1 and 2 were present and learned counsel for accused sought for pass over of the case to cross-examine the witnesses. Later, on the same day, learned counsel for accused did not appear before the Court. Hence, PWs.1 and 2 were discharged. On 05.02.2014, PW.3 was examined and case was adjourned to 19.02.2014, on which day, PWs.4 and 5 were examined and again, time was prayed by accused Nos.1 to 3 for cross-examination of the said witnesses without sufficient grounds. Therefore, the trial Court by the order impugned, has rejected the application filed by accused Nos.1 to 3 under Section 311 Cr.P.C., seeking summoning of PWs.1 to 5 for cross-examination holding that sufficient time had been granted to the accused, but they failed to utilize the valuable time of the Court granted to them. The trial Court considering the conduct of accused Nos.1 to 3 held that accused Nos.1 to 3 could not claim such opportunity once again as a matter of right and accordingly, dismissed the application.

4. Looking to the seriousness of the offence punishable under Section 395 of IPC alleged against accused, the consequences of non cross-examination of PWs.1 to 5 would lead to acceptance of the entire case of the prosecution and it may end up in conviction of the accused. Merely because there is some inaction or deliberate action on the part of accused Nos.1 to 3, opportunity should not be denied to them, but the trial Court, by means of imposing certain conditions, could have granted them one more opportunity to cross-examine PWs.1 to 5. If such stringent

conditions were also violated by accused Nos.1 to 3, then the Court could have taken such a stringent view against them. It is seen that the witnesses were present on all the three occasions before the trial Court and it goes without saying that the Government has to pay witness batta as and when witnesses are secured for their presence before the Court.

5. In this case, accused Nos.1 to 3 have sought for cross-examination of PWs.1 to 5. They were present before the Court. They were not cross-examined. However, as I have stated earlier if the valuable right of cross-examination is curtailed, the very purpose of conducting trial would be frustrated. It will affect the fair trial so far as the other accused persons are concerned. Therefore, it is just and necessary for this Court to impose certain stringent conditions on petitioners (accused Nos.1 to 3) and provide one more opportunity to them to cross-examine the said witnesses. The learned Public Prosecutor has submitted before the trial Court that it is very difficult to secure the presence of the witnesses. That cannot be a ground for refusing an opportunity to the accused. In this regard, it is worth to note a decision of this Court in the matter of Rajesh and Another Vs. The State of Karnataka by the Station House Officer reported in ILR 2006 KAR 1203, wherein this Court relying upon the ruling of the Apex Court reported in AIR 1999 SC 2292 has observed that:

" A lacuna in prosecution is not to be equated with the fall out of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone.

A corollary of any such laches or mistakes during the conducting of case cannot fill up.

Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in trial can be foreclosed from correcting errors.

If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertance, the Court should be magnanimous in permitting, such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

6. In view of the above said decision, in my opinion, if one more opportunity is not given to the accused persons, it will lead to very serious consequences. Therefore, it is just and necessary to provide one more opportunity to them. The impugned order passed by the trial Court is liable to be set aside. Hence, the following:

ORDER

The petition is allowed. Consequently, the order passed by the learned V Addl. District and Sessions Judge, Bangalore Rural District (sitting at Devanahalli) in S.C. No.285/2012 dated 11.04.2014 is hereby set aside. Consequently, the application filed by Cr.P.C., is hereby allowed.

The trial Court is directed to secure the presence of PWs.1 to 5 and provide opportunity to the accused to cross-examine the said witnesses by fixing a date, which is convenient to both the prosecution and the accused.

On the date to be fixed by the trial Court, either learned counsel for the accused or the accused shall not seek for any adjournment unless the Court itself feels it just and necessary to adjourn the case for any other reason.

The witness batta and expenses of the day to be payable to PWs.1 to 5 shall be paid by the accused on the date of examination of those witnesses, the trial Court can reasonably quantify the amount.

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