

Suresh Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-04-2015

Judge : A.N. Venugopala Gowda

Appeal No. : Criminal Petition No. 2639 of 2015

Appellant : Suresh

Respondent : State of Karnataka

Judgement :

(Prayer: This CrI.P. is filed under S.482 Cr.P.C., praying to quash the order dated 09.04.2015 in S.C.No.429/2009 pending on the file of prl. sessions judge, Bangalore and allow the application filed under S.311 of the Cr.P.C.

1. This petition is directed against an order dated 09.04.2015 passed in S.C.No.439/2009 by the Prl. City Civil and Sessions Judge, Bengaluru, whereby, the I.A. filed under S.311 of Cr.P.C. was rejected.

2. The petitioner is being prosecuted for the offence punishable under S.302 of IPC. The prosecution having concluded its evidence, the petitioner filed an I.A. under S.311 of Cr.P.C. for recall of PWs.2, 3 and 11, for cross-examination. The application having been opposed by the prosecution, the impugned order was passed.

3. The Trial Judge has held that the reason assigned that on 20.02.2015, the advocate was unwell, is not a sufficient justification to seek the recall of witnesses.
f

Another reason assigned is, that by remaining absent, the advocate for the accused is trying to control the proceedings in his own way and that the criminal proceedings cannot be conducted at the pleasure of the accused.

4. Sri Sandesh J.Chouta, learned advocate for the petitioner, contended that the learned Sessions Judge has taken a hyper-technical view of the matter without appreciating that grave prejudice will be caused to the accused, if the prayer for cross-examination of PWs.2, 3 and 11 is not granted. He submitted that the absence of the advocate for the accused being bona fide and the witnesses sought to be recalled being star witnesses, in view of the affidavit of Sri Arun Kumar Y.H., learned advocate, filed in this petition, the impugned order being unreasonable is liable to be set aside. Reliance was placed on the decision in RAJENDRA PRASAD Vs. NARCOTIC CELL, 1999(6) SCC 110 and it was submitted that on account of the mistake, which might have been committed by the advocate, the accused should not be made to suffer. f

5. Smt. R.Anitha, learned HCGP, on the other hand contended that the application filed by the petitioner in the Court below being bald and there being no bonafides, learned Sessions Judge is justified in passing the order of rejection. She submitted that the petitioner having adopted dilatory tactics and there being procrastination of trial, the petitioner is not entitled to seek recall of the witnesses.

6. Affidavit of Sri Arun Kumar Y.H., advocate for the accused in the Court below was filed. He has stated that on account of the being unwell, could not be present and by rejecting the request for adjournment made through a colleague, the witnesses were discharged. He is present before the Court and offered an unconditional apology for the lapse and stated that if one last opportunity is granted, he would conduct the cross- examination of P.Ws. 2, 3 and 11. He undertook to complete the cross-examination of the said witnesses on the date as may be fixed by the learned Trial Judge and submitted that he will not seek adjournment on any ground.

7. Keeping in view the rival contentions and also the contents of the affidavit of Sri Arun Kumar Y.H., the point for consideration is, whether the impugned order is unreasonable and hence the petitioner should be afforded with an opportunity to cross-examine P. Ws. 2 3 and 11?

8. The object underlined in S. 311 Cr.P.C., has been made clear by the Apex court, in HANUMAN RAM Vs. STATE OF RAJASTHAN AND OTHERS, 2008 (15) SCC 652. It has been held, that the object behind the provision is to prevent failure of justice on account of the mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statement of witnesses.

9. In HOFFMAN ANDREAS Vs. INSPECTOR OF CUSTOMS, AMRITSAR, 2000(10) SCC 430, Apex Court has held, that the Court should adopt a latitude and liberal view in the interest of justice when it has unbridled powers in the matter as enshrined in S.311 of Cr.P.C. INSPECTOR OF CUSTOMS, AMRITSAR, 2000(10) SCC 430, Apex Court has held, that the Court should adopt a latitude and liberal view in the interest of justice when it has unbridled powers in the matter as enshrined in S.311 of Cr P.C.

10. In MOHAN LAL SHAMJI SONI VS. UNION OF INDIA, 1991 Supp (1) SCC 2 71, the extent and scope of power of the Court to recall witnesses having been examined by the Apex Court, it has been held as follows:

"27. The principle of law that emerges from the views expressed by this court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case."

11. In view of the settled principles of law and factual scenario of the instant case, more particularly, the affidavit of Sri Arun Kumar Y.H., and also the undertaking given by him, noticed supra, it follows that the learned Sessions Judge is

unjustified in rejecting the application, which was filed without any undue delay. The impugned order being opposed to the settled principles of law and also unreasonable and as the petitioner should be extended with an opportunity, deserves to be set aside.

Consequently, the impugned order is set aside and the I.A. filed before the Sessions Court is allowed. PWs.2, 3 and 11 are directed to be recalled. Cross-examination of the said witnesses shall be completed by the accused on the respective date/s of they being kept present. The petitioner shall not cause any delay or procrastination of the trial. The case be decided with expedition and before 31st July 2015.

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