

State Vs. P.P. Miltan

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Court : Karnataka

Decided On : Sep-21-1994

Reported in : ILR1994KAR3308; 1994(4)KarLJ588

Judge : M.F. Saldanha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 299

Appeal No. : Crl. R.P. No. 477 of 1994

Appellant : State

Respondent : P.P. Miltan

Advocate for Pet/Ap. : M. Marigowda, HCGP

Disposition : Revision petition dismissed

Judgement :

ORDER

Saldanha, J.

1. This Revision Petition preferred by the State is directed against an order whereby the learned trial Magistrate has discharged the accused. Briefly stated, the accused who was facing trial for an offence of theft which relates to a charge sheet filed in the year 1992 He had been released on bail for a sum of Rs. 5,000/-

with one surety. When the matter was taken up in January 1994 for recording of evidence, it was found that the accused was absconding. The learned Magistrate took necessary steps to secure his attendance by adopting coercive steps against the surety. He also recorded the evidence of one witness in the absence of the accused under Section 299 Cr.P.C. Thereafter, since the police had filed a report to the effect that the accused was not traceable, the learned Magistrate discharged the accused and closed the proceedings. It is this action that is called into question in the present proceeding.

2. The learned High Court Government Pleader submitted that the prosecution was not afforded an opportunity to prove its case and the trial Court ought to have taken further steps to secure the attendance of the accused. He submits that the order was hurriedly passed and secondly, the prosecution was denied the opportunity of establishing the charges. The learned Government Pleader has also advanced a further submission on the aspect of propriety whereby he has contended that the trial Court ought not to have taken the matter lightly and closed the proceedings thereby virtually conferring a benefit on the accused who was charged with acts of some seriousness and therefore, in the interest of Justice, the order has to be set aside and the matter to be remanded for retrial. The learned Government Pleader has also relied on two earlier Decisions of this Court in *ANTEN BASTYNAV VANIYACHE SIDDI* 1972 (1) Mys.L.J. 573 and in *STATE OF MYSORE v. SANJEEVA* 1956 Mys.L.J. 1. in support of his submission. I would normally have had no hesitation in upholding the submission canvassed on behalf of the State. There is no dispute with regard to the principles involved in the matter as set out under the aforesaid Decisions.

3. The facts of this case however, indicate that the learned Magistrate has given the prosecution sufficient time to produce the accused and has also taken appropriate steps against the surety to secure the presence of the accused. It is on record, through a report from the police, that the accused is not traceable and his whereabouts are not known. In these circumstances, to my mind, the trial Court was no longer obliged to wait or to keep the proceedings pending in the hope that at some future point of time, the accused would be traced. Considering the nature of the offence it is relatively a minor one and consequently after having

made reasonable efforts if the accused is not traceable, the correct procedure is to close the matter. The action taken indicates that the trial Court has taken necessary steps to try and secure the presence of the accused. Having regard to the arrears of cases and the pressure on Judicial time, to my mind, the trial Court was fully justified in continuing with the proceedings. After a reasonable period of time thereafter there is no special obligation to keep the same pending indefinitely. In this view of the matter, the Revision Petition fails and stands dismissed.

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