

Himchalsingh Vs. State of M.P.

Himchalsingh Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/506708

Court : Madhya Pradesh

Decided On : Jan-04-1989

Reported in : 1990CriLJ1490

Judge : B.M. Lal, J.

Acts : Prevention of Corruption Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 303, 304 and 309; [Constitution of India](#) - Article 22(1) and 22(2)

Appeal No. : Criminal Revn. Petn. No. 163 of 1988

Appellant : Himchalsingh

Respondent : State of M.P.

Advocate for Def. : M.M. Qureshi, Deputy Govt. Adv.

Advocate for Pet/Ap. : J.P. Gupta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.M. Lal, J.

1. Himachal Singh applicant is being tried by the Special Judge, Camp Sabalgarh in Special Case No. 2 of 1986 for various offences under the Prevention of

Corruption Act. He has engaged Shri Bahadur Singh Dhakad, a Senior Counsel to defend himself. On 21-11-1988 the case was fixed for recording evidence. On this date, it appears that Shri Bahadur Singh Dhakad, Counsel of the applicant was seriously ill and therefore, he could not attend the hearing of case. The applicant, therefore, moved an application for adjournment. This application is purported to have been filed under Section 309, Cr.P.C., but by the impugned order dated 28-11-88 the learned special Judge, rejected the application and while proceeding with the case, examined prosecution witness Sobaransingh.

2. Shri R.P. Goyaner, Advocate appeared on behalf of the applicant only for seeking adjournment, but he was asked by the Court to cross-examine the witness Sobaransingh. As the counsel Shri Goyaner was not prepared with the case, he could not cross-examine the witness. Under these circumstances the witness was discharged and the application for adjournment was also rejected on the ground that the Special case is pending since 1986. The order-sheet does not reveal that it was at the instance of the applicant Himachal Singh, the case was adjourned at any stage. It is against this order that this revision is filed.

3. Under Article 22(1) of the Constitution an accused person has been guaranteed with a constitutional right to engage a counsel of his own choice. Similar provision finds place in the Cr.P.C. 1973 as well. Section 303 of the Code also gives this right to the accused person to engage a counsel of his own choice. The applicant Himachal Singh has engaged Shri Bahadur Singh Dhakad who fell ill on 28-11-88. In view of the specific provision of Article 22(1) of the Constitution and specific provisions of Section 303, Cr. P. C., 1973, the Court has no power to order for engaging a counsel against the choice of the accused as the right guaranteed, is an inherent right of an accused person to engage a counsel of his choice. This being a valuable right, the Courts are not supposed to interfere with this right lightly when, in the instant case, it has not been found that under the garb of the said right, the accused is misusing the same.

4. In the instant case neither anything has been pointed out by the trial Court in the impugned order nor did the learned Counsel appearing for the non-applicant in the special case suggest that the applicant Himachal Singh under the garb of these

two provisions misused that right in getting the case adjourned. Therefore, if the choice of the accused is not adhered to and the trial is concluded then such a trial in the opinion of this Court is infected with vice of unfairness and the same cannot be sustained in the eye of law, being against the philosophy of legal system.

5. No doubt, provisions of Section 304, Cr.P.C. postulates that on State expenses, legal aid to the accused be provided but unfortunately, unbrieffed lawyers are being appointed. In such cases, a duty casts upon the Court to appoint counsel from young lawyers of marked ability and further must give them sufficient time to consult the accused so that the counsel must prepare the case to the satisfaction of his client and conduct the case effectively.

6. As stated, in the instant case, the learned special Judge though asked Shri Goyaner to cross-examine the witness, yet no time was given to him to prepare the case properly. He appeared in the case just to get the case adjourned. Therefore, the applicant Himachal Singh is deprived of the right guaranteed under Article 22(2). of the Constitution.

7. The aforesaid two provisions further envisage the, scope of giving fair opportunity in securing the services of a counsel to the accused of his choice. In the instant case the learned special Judge did not afford any opportunity to. the applicant to engage a counsel of his choice. Under the circumstances, the learned special Judge while exercising his jurisdiction under Section 309, Cr.P.C. should have adjourned the case affording opportunity to the applicant to get the witness cross-examined effectively by his counsel Shri Bahadursingh Dhakad.

8. No doubt adjournment of a special case must be strictly deprecated, but all the same absence of defence counsel on account of his illness, upon whom his client has full faith, is also not less (important) and therefore, in all fairness of the trial, if the accused is not found indulging in protracting the trial by seeking adjournment on flimsy ground, the trial is to be adjourned on the ground of illness of the counsel of the accused so as to afford him full opportunity to defend him.

9. Consequently, the revision is allowed. The order dated 28-11-88 is set aside and it is directed that on 20th and 21st January, 1989 or on some other suitable

date witnesses Sobran Singh and Kailash Chandra Parashar be further made available for cross-examination on behalf of the applicant Himachal Singh by his counsel Shri Bahadur Singh Dhakad.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com