

Rameshwari Devi and ors. Vs. the State

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Court : Madhya Pradesh

Decided On : Aug-03-1998

Reported in : 1998CriLJ4339

Judge : J.G. Chitre, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 317

Appeal No. : Criminal Revn. No. 324 of 1998

Appellant : Rameshwari Devi and ors.

Respondent : The State

Advocate for Def. : Prakash Verma, Dy. Govt Adv.

Advocate for Pet/Ap. : Jaisingh, Adv.

Judgement :

ORDER

J.G. Chitre, J.

1. This revision petition assails the order which has been passed by the Addl. Sessions Judge, Indore in Sessions trial No. 362/92 dated 22-6-98 by which, the learned Trial Judge has rejected the prayer made by the petitioners for exemption in context with the attendance before the Court at the time of trial.

2. The matter revolves around a short point which needs to be adjudicated and, therefore, with the consent of the parties, this revision petition is decided at the motion hearing stage itself.

3. The petitioners are facing a prosecution since 1991 and as submitted by Shri Jaisingh, they are attending the Court at Indore from village Chakla, P.S. Jahangirabad, Pilakhwa PS Pilakhwa District Gaziabad and Lakhxar, PS Lakhxar District Haridwar, all situate in Uttar Pradesh. The prosecution has alleged that the wife of the co-accused Rajiv committed suicide at Indore. The petitioner No. 1 and 2 happen to be the parents of said Rajiv. Petitioner No. 3 happens to be the sister of Rajiv and Petitioner No. 4 happens to be the brother of Rajiv. The age of petitioner No. 1 Ramashwari Devi is 56 yeears, age of petitioner No. 2 Roshan Singh is 60 years and the age of Smt. Sushma Petitioner No. 3 is 30 years.

4. Shri Jaisingh submitted that since 1992, these petitioners are coming from Uttar Pradesh by travelling long distance for attending the Court. He submitted that the permanent exemption was granted in favour of the petitioners No. 1 to 3 on 29-9-92. It appears that it was thereafter withdrawn. Shri Jaisingh further submitted that nine witnesses have been examined and there is no need of identification of these petitioners in the Court, because the witnesses would be mostly relatives of the deceased and the petitioners. Shri Jaisingh further submitted that the petitioners were never residing at Indore permanently and therefore, there is no question of their being identified by neighbouring persons. Shri Jaisingh further pointed out that the petitioners were absent only on two instances. He submitted that the learned Trial Judge committed an error in concluding that the behaviour of the petitioners so far as their attendance is concerned and adjournments sought on their behalf is concerned when the witnesses were present do not entitle them to get exemption. He submitted that keeping in view the long distance which they are required to travel in these days and the ages of the petitioners No. 1 and 2, the learned Trial Judge should have granted exemption in their favour so far as attendance before the Court is concerned.

5. Shri Verma, learned Dy. Government Advocate appearing for the Respondent/State submitted that it is the discretion of the trial Court to grant the

exemption or not. He submitted that the impugned order is correct, proper and legal and therefore, does not require to be set aside.

6. The discretion is to be exercised carefully for achieving the purpose for which, the judge is to act or pass the order. It is to be exercised always in the interests of justice. Prima facie, it appears from the arguments advanced by Shri Jaisingh that there is no need of identification of the petitioners by the witnesses. The learned Trial Judge has committed an error in concluding that the petitioners were having such a behaviour which does not allow them to have the benefit of exemption in attendance. The language which has been used in paragraph No. 3 from the bottom, unnecessarily (sic) impression that the petitioners were in the habit of remaining absent regularly. The entries of the order-sheets show that it was so only on two instances.

7. In view of Section 317 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code for convenience), a trial Judge is entitled to grant such exemption to the accused if the situation that way indicates. He can record the evidence in the absence of the accused. The presence of the accused would definitely be necessary when the accused are to be identified by the prosecution witnesses. In this case, there does not appear to be such requirement in respect of presence of the accused.

8. It is to be noted that the petitioners No. 1 and 3 are ladies. Petitioner No. 1 is quite aged lady and petitioner No. 3 is middle aged woman. She is also a married lady and she must have been also saddled with domestic responsibilities of her household. Petitioner No. 2 is quite an aged person. They are required to come to Indore by travelling such a long distance. One has to inform himself about the crowd which the trains are carrying every day. These are rainy days. Travelling by trains or buses from Uttar Pradesh to Indore is not an easy or comfortable thing. The Courts should use proper view at the time of dealing with the prayers made by the litigants. Punitive approach is totally undesirable. I do not find that any prejudice would be caused to the trial if exemption is granted to petitioners No. 1 to 3 as it was granted in their favour previously. The petitioner No. 4 would be attending the Court for the purpose of maintaining the dignity and decorum of the

Court and to assuring the interest of the prosecution in the trial. Thus, the revision petition stands allowed. The order passed by the Trial Court refusing the exemption to the petitioners stands set-aside. Keeping in view the provisions of Section 317 of the Code, the petitioners are exempted from attending the Court on every date of hearing. They may be called to attend the Court when their presence is necessary for the recording the evidence as well as for their examination under the provisions of Section 313 of the Code. It is made very clear that whenever the petitioners No. 1 to 3 would be absent on the date of hearing or trial invariably their lawyer shall remain present in the Court otherwise the petitioners No. 1 to 3 shall not be entitled to have benefit of the concession granted in their favour. The petitioners shall indicate the names of the lawyers who would be remaining present on such dates of hearing, in writing.

9. This revision petition, thus, stands disposed of. C.C. on payment.

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