

Arun Kumar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-03-1998

Reported in : 1999CriLJ717

Judge : S.B. Sakarikar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 170, 173, 173(5), 397 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B and 498A

Appeal No. : M.Cr. C. No. 3172 of 1998

Appellant : Arun Kumar

Respondent : State of Madhya Pradesh

Advocate for Def. : Vivek Sharan, P.L.

Advocate for Pet/Ap. : M. Bhatnagar, Sr. Adv. and ;V.S. Chauhan, Adv.

Judgement :

ORDER

S.B. Sakarikar, J.

1. Accused/applicants have directed this petition under Section 482, Cr. P.C. for quashing of the order dated 15-7-1998 rendered by learned Additional Sessions Judge, Ujjain in ST No. 132/ 98 whereby the learned ASJ framed charges against

the applicants for the offence punishable under Sections 304B and 498A of the IPC and prayed for reconsideration on the point of framing of charges.

2. Briefly stated, the facts of the case are that Police Neelganga, District Ujjain filed challan against accused/applicants for the offences under Sections 498A and 304B, IPC on the allegations that daughter-in-law of the petitioner No. 2, Smt. Kirtibai wife of Arunkumar committed suicide by setting her to fire resulting into her death due to burn injuries within seven years of her marriage on the ground of demand of Rs. 1 lakh and a motor cycle from her parents.

3. Learned trial Court on perusing challan papers and considering the submissions of the counsel for the petitioners ordered framing of charges against the applicants by the impugned order. After said order of framing of charges against the applicants, the applicants have filed an application before trial Court on 21-7-98 stating therein that the applicants came to know that before the death of the deceased Kirtibai, her statements under Section 161, Cr. P.C. as also statements in the form of dying declaration were recorded but the said statements are suppressed by the Prosecution and not filed along with the charge-sheet. The applicants prayed that the Prosecution be directed to file said dying declaration and statements recorded under Section 161, Cr. P.C. in the Court and copy be supplied to the accused/ applicants. It is also prayed that on perusal of such statements and dying declaration of the deceased no charges could be framed against the applicants and the question of framing of charges be reconsidered in the light of the said dying declaration of the deceased. Learned trial Judge by order dated 22-7-1998 rejected the said application on the ground that the prosecution cannot be compelled to file documents which are not relied on by the prosecution. Aggrieved, the applicants have filed this petition for quashing of the aforesaid order of the trial Court and directing prosecution to file said dying declaration of the deceased in the Court and supply copy of the same to them and also for reconsideration of charges in the light of the said dying declaration of the deceased.

4. I have heard Shri Mahendra Bhatnagar, Senior Counsel with Shri Chouhan for the applicants and Shri Vivek Sharan learned P. L. for the State.

5. I have considered rival submissions of the counsel and carefully perused the record as also the case diary of Crime No. 219/98 of Police Station, Neelganga, District Ujjain. During the course of arguments, learned Pane Lawyer appearing for the State, on perusal of the case diary submitted that during investigation and before the death of deceased Kirtibai, her dying declaration was recorded on 11 - 4- 1998 by the Executive Magistrate (Tehsildar). The fact of existence of dying declaration in the Court is also established from the facts stated in the bail order dated 20-8-98 of this Court passed in MCr C No. 2118 of 98. As such it is not disputed that before the death of deceased Kirtibai her dying declaration was recorded by the Executive Magistrate and available in the case diary but the said dying declaration was not filed by the prosecution along with the challan filed under Section 173, Cr. P.C.

6. The counsel for the applicants submitted that a great prejudice will be caused to the petitioner if the said dying declaration is not produced before the Court at the trial. He submitted that for attaining ends of justice and fair trial to the petitioner, a direction to file said dying declaration with a copy to the petitioner appears necessary. At the same time, he also argued that the trial Court be also directed to reconsider the case on charge in the light of the said dying declaration withheld by the prosecution.

7. Taking into consideration the submissions of the counsel for the applicant and in view of the fact of existence of the dying declaration of the deceased available in the case diary for attaining ends of justice and fair trial to the applicant, I consider it proper to direct the prosecution to file the aforesaid dying declaration in the trial Court and supply copies of the same to the accused applicant.

8. On the question of reconsideration of the charges, in my considered opinion, charges already framed by the trial Court in absence of the aforesaid statements of the deceased cannot be quashed or reconsidered at this stage of the trial exercising the powers under Section 482, Cr. P.C. The law is well settled on the point that while framing of charges the Court has to peruse the record of the case and documents submitted by the prosecution along with the charge-sheet as contemplated under Section 173, Cr. P.C. Section 170 of the Code of Criminal

Procedure contemplates that if, upon an investigation, it appears to the officer-in-charge of Police Station that there is sufficient evidence or reasonable grounds as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon the police report and to try the accused or commit him for trial. In Section 173(5) of the Cr. P.C. it is stated that

When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

9. On plain reading of the aforesaid provision, it emerged that when a report by the Police Officer on completion of investigation Under Section 170 is forwarded to the Court concerned, the police concerned shall forward with the report all such documents or relevant extract thereof on which the prosecution proposes to rely other than those already sent to a Magistrate during investigation as. also the statements of all persons whom the prosecution proposes to examine as its witnesses.

10. In the present case, the dying declaration of the deceased recorded during investigations has not been filed or relied on by the Prosecution in the report submitted under Section 173, Cr. P.C. As such it is not. necessary for the trial Court to consider the charge in the light of the aforesaid statement of the deceased even if it is favourable to the defence. It is needless to say that as the alleged dying declaration of the deceased recorded during investigations is not relied on by the Prosecution it. cannot be considered for any purpose, unless proved in accordance with law.

11. It is pertinent to note that the order dated 15th July, 1998 of the trial Court framing charges against the applicants has not been challenged by filing a revision petition under Section 397, Cr. P.C. As such prayer of the applicants of quashing of the charges and reconsidering the matter of charge cannot be accepted in

exercise of powers under Section 482, Cr. P.C.

12. In the result, this petition partly succeeds and allowed in part directing the trial Court to order the prosecution to file alleged dying declaration of the deceased in the Court and supply copy of the same to the applicants and thereafter, proceed with the trial in conformity with law. No orders as to costs.

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