

Rajkumar Vs. Gunmala and ors.

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Court : Madhya Pradesh

Decided On : Feb-02-2007

Reported in : IV(2007)BC227; 2007(1)MPLJ579

Judge : S.C. Vyas, J.

Appellant : Rajkumar

Respondent : Gunmala and ors.

Advocate for Pet/Ap. : Mr. C.B. Pandey

Disposition : Petition dismissed

Judgement :

ORDER

S.C. Vyas, J.

1. Mr. C.B. Pandey, learned Counsel for the petitioner.

2. Heard in motion.

3. This is a petition filed under Section 482 of Criminal Procedure Code for quashment of the order passed by JMFC, Indore in Criminal Case No. 2264/01 dated 7.11.2006 by which the application moved by present petitioner under Section 311 of the Criminal Procedure Code was dismissed and which has been

confirmed by 11th Additional Sessions Judge, Indore by order dated 8.1.2007 passed in Criminal Revision No. 755/06.

4. Present petitioner and some other persons are facing criminal prosecution under Section 138 of the Negotiable Instruments Act on the basis of a private complaint filed by non-applicant No. 1. The case is at the stage of pronouncement of judgment. At this stage an application under Section 311, Criminal Procedure Code has been moved by the present petitioner for recalling the complainant so that some questions can be put to her regarding the present petitioner. The prayer was opposed by the complainant and thereafter the application was dismissed. Revision also failed and then petitioner has come up before this Court praying for invocation of provisions of Section 482 of Criminal Procedure Code and for directing the Trial Court to allow the application moved by the present petitioner.

5. The order passed by 11th Additional Sessions Judge, Indore in criminal revision shows that the case was at the stage of pronouncement of judgment and the complainant was effectively cross-examined by the present petitioner. It was not even clarified by the present petitioner in the Trial Court as well as in the Revisional Court also as to on what points it has become necessary to cross-examine further the same witness.

6. Learned Counsel for the petitioner submitted that co-accused of the case has assured the petitioner that he will take care of the defence of accused persons and will try to settle the dispute with the complainant by compounding the offence. The present petitioner believed on the version of the co-accused and did not take effective part in the trial and had not cross-examined the complainant effectively. Now at the stage of pronouncement of judgment co-accused who was the Managing Director of the firm has informed the petitioner that his efforts for compounding the offence had failed and therefore petitioner is required to take care regarding his own defence. Learned Counsel for the petitioner submitted that in this background it becomes necessary for the present petitioner to recall the complainant for further cross-examination so that whole defence of the present petitioner can be put to him.

7. I have considered the arguments advanced by learned Counsel for the petitioner. It is apparent from the order passed by the Revisional Court as well as from the averments made in this petition itself that the criminal case has travelled beyond the stages of recording prosecution evidence, examination of accused persons in the defence. During all these stages petitioner was having full opportunity to cross-examine the complainant and to put his defence. It appears that he failed to avail the opportunities which were provided to him. Even, now it is not clear as to what type of questions are necessary to be put to the complainant. It has not been clarified in the petition itself. In such circumstances at the fag end of the trial when the case is at the stage of pronouncement of judgment then it is not advisable to reopen the trial of the criminal case and to recall the complainant for cross-examination. The powers which are available to this Court under Section 482 of Criminal Procedure Code can only be exercised in rarest of rare cases and particularly when there is any occasion of failure of justice or it is necessary in the interest of justice to exercise such powers. In the facts of present case, there appears no such occasion.

8. Therefore in the facts and circumstances of the case the order passed by the Trial Court and confirmed by Revisional Court does not suffer from any infirmity and injustice and does not call for any interference. The petition fails and is dismissed in limine without giving any notice to the opposite party.