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Pradeep Kumar Vs. the State of Delhi

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Court : Delhi

Decided On : Mar-03-1999

Reported in : ILR1998Delhi249

Judge : S.N. Kapoor, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 397, 401 and 482

Appeal No. : Crl. Rev. 67/99

Appellant : Pradeep Kumar

Respondent : The State of Delhi

Advocate for Def. : Mr. H.J.S. Ahluwalia, Adv.

Advocate for Pet/Ap. : Mr. N.K. Singh, Adv

Judgement :
ORDER

S.N. Kapoor, J.

1. This petition u/s 397/401 read with Section 482 Cr PC is directed against the order dated 2nd February 1999 passed by a Metropolitan Magistrate. There is no dispute that the applicant was facing trial for offence u/s 292 read with Section 34 IPC committed on dated 30th October 1988. The accused was arrested on the

same day at the spot. Charge was framed on 4th October 1993. It appears from the order sheets of various dates that the prosecution failed to examine any witness before 2nd February 1999. This is so despite the fact that the learned Metropolitan Magistrate repeatedly issued warrants against the witnesses to procure their attendance when police witnesses were served but they did not appear.

2. On 21st November 1998, an application was moved by the accused for discharging the accused in the light of the order passed by the Supreme Court in Raj Deo Sharma Vs . State of Bihar : 1998 CriLJ4596 . The relevant portion of the judgment reads as under:

i) 'In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has been examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case.

ii) ...

iii) ...

iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no Court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by Clauses (i) to (iii).'

3. The case of the applicant is that since the prosecution failed to examine the witnesses within two years from the date of framing of the charge on 4th October 1993. This case relates to an offence punishable with imprisonment for a period not exceeding three years. Consequently, irrespective of the fact that the prosecution has failed to examine all the witnesses within the said period the learned Metropolitan Magistrate was supposed to proceed to the next step provided by law for the trial of the case and in absence of any evidence there is no

basis to examine the accused u/s 313 Cr PC. It is contended that the examination-in-chief should not have been recorded on 2nd February 1999 and application moved by the accused/applicant should have been decided first. The learned Metropolitan Magistrate should have closed the evidence. It is submitted that in violation of the order of Supreme Court, the learned Metropolitan Magistrate recorded the statements and directed the defendant to cross-examine the witnesses.

4. Learned counsel appearing on behalf of the State could not dispute that offence u/s 292 on first conviction is punishable 'with an imprisonment which may extend up to two years and with fine which may extend to Rs.2000/- and in the event of second or subsequent conviction with imprisonment of either description of a term which may extend up to five years and also with fine which may extend to Rs.5000/-. thus, the offence is not punishable with any offence exceeding Rs. 7 lakhs.'

5. It is apparent that an application was moved for closing the evidence to comply with the directions of the Supreme Court. The learned counsel for the State submits that the accused was apprehended at the spot and four witnesses had already been examined on 2nd February 1999. The learned trial court could be directed to proceed further to the next step provided by law for the trial of the case and the next step would be to cross-examine the witnesses; to record the statement u/s 313 Cr.PC; to hear the argument, and to pronounce the judgment.

6. Before proceeding further, it would be relevant to reproduce the relevant portion of the order passed by the learned Metropolitan Magistrate on the application. It reads as under:

'...The judgment of the Supreme Court was passed on 8/10/98. Last date of hearing in this case was 2/12/98. Till last date of hearing, directions were not in force from Supreme Court and no court in India can bring any conscious that this kind of direction would be binding on next date of hearing. On the date of last adjournment, no such directions were passed by Supreme Court. In my opinion, after adjournment case would be fixed after closing the evidence as per directions of the Supreme Court. Chief of all the four witnesses recorded in the absence of

accused and in the absence of the counsel for accused. Counsel is directed to cross-examine all witnesses.'

7. On a pointed query to the learned counsel for the State, he found it difficult to support the impugned order in its entirety. One could very well justify the order, if the learned Metropolitan Magistrate recorded the examination-in-chief of four witnesses before he came to know of the judgment of the Supreme Court. But if an application had already been filed on 21st November 1998 in this regard and the learned Metropolitan Magistrate acknowledges that fact by stating that on last date of hearing, counsel appeared and apprised the date of the filing of the application which is listed for today, the order could not be justified.

8. There are two lacunae in the impugned order which are causing concern. This court does appreciate his anxiety, for the accused was arrested on the spot. Morally, he may be right to record the statements of the witnesses and to proceed further especially when the witnesses were present. One may assume that he may be in dilemma also for non-examination of four witnesses, was likely to give an impression that learned Metropolitan Magistrate was prejudiced against the prosecution. Witnesses might have also felt it unusual for when they did not appear, warrants were issued and when they appeared, they were discharged without being examined, in a case where the accused was arrested at the spot. But legally speaking, this order cannot be sustained for the simple reason that the application was pending for closing the evidence and has been brought to the notice of the learned Metropolitan Magistrate and the application should have been disposed of first before recording of the evidence. Secondly, learned counsel for the State could not point out anything to indicate that delay was attributable to the conduct of the accused in protracting the trial to bring the matter within the exception as provided in sub-para (4) of para 6 of the judgment. From the order sheet it is apparent that the witnesses including police witnesses did not appear despite repeated warrants. So the delay is not attributable to the conduct of the accused.

9. In such a circumstance, there is only one option open for this court and that is to direct that the learned Metropolitan Magistrate shall close the evidence and

proceed to the next step and decide the matter in accordance with law for the trial of the case by complying the judgment of the Supreme Court. The learned Metropolitan Magistrate is supposed to ignore the four witnesses examined. No doubt it is most unusual case wherein an accused wanted for an offence u/s 292 was arrested at the spot. Four witnesses have been examined but against the directions of the Supreme Court.Right to a speedy trial is now a fundamental right under Article 21 for it is implicit in the guarantee of life and personal liberty. Continuously prolonged harassment to attend courts, to ensure payment of fee to counsel, to lose day's income, curtails personal liberty and right to live with human dignity. One has to consider the invisible punishment in prolonged trial. One must also take into consideration financial punishment on the State, in the shape of working hours lost of the court staff in preparing notices, summons and warrants repeatedly, time spent by the courts in repeatedly passing such orders; time spent by the constable in visiting the residences of witnesses. Leaving aside few exceptions, delay is obviously leading to acquittal either on account of fear of the accused or fear of wastage of their time in courts. The witnesses have not been examined completely for they are yet to be cross-examined. Obviously, it would lead to his acquittal. But this court cannot afford to ignore the spirit of the orders passed by the Supreme Court in Raj Deo Sharma v. State of Bihar (supra).

10. The parties are directed to appear before the learned trial court on 17th March 1999.

11. The petition is disposed of accordingly.

12. Trial court record be sent back along with a copy of this order for compliance, without delay.

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