

ismile and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-24-1998

Reported in : 1998CriLJ3703; 1998(3)WLC255; 1998(1)WLN314

Judge : Amaresh Ku. Singh, J.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 323 and 325; Code of Criminal Procedure (CrPC) , 1974 - Sections 481 and 482

Appeal No. : Crl. Misc. Petn. No. 426 of 1996

Appellant : ismile and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : Ranjeet Joshi, Adv.

Judgement :

ORDER

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioners and the learned Public Prosecutor and perused the record of the criminal case No. 199/81 State v. Ismile and Ors.

2. By this petition, the petitioners have prayed that the trial of criminal case No. 199/81 State v. Ismile pending in the Court of Additional Chief Judicial Magistrate, Makarana be quashed, because of inordinate delay in completing the trial. A perusal of the record of lower Court shows that challan was filed on 23rd July, 81 alleging the commission of offences punishable Under Section 147, 148, 149, 325 and 323, IPC. Charges were framed on 8-1-88. The delay in framing of the charge was partly on account of non-appearance of some of the accused and the filing of a revision petition by the accused in the Court of Sessions. After framing the charge, efforts were made to summon the witnesses, but because of non-appearance of the witnesses, the case had adjourned from time to time. On 21 st September, 93, the witnesses, who appeared before the Court stated that they did not know the accused persons by name and that they could identify them in the Court. The Court, therefore, directed the accused persons to remain present on the next date of hearing. In place of complying with the directions of the Court, the accused persons filed S.B. Cri. Misc. Petition No. 615/93 against the order of the trial Magistrate. That revision petition was dismissed by this Court on 5-4-96. It is therefore, obvious that the petition was any merit. After the dismissal of the petition, the trial Magistrate issued notices to the petitioners, but the petitioners have not cared to appear in the trial Court and instead filed this petition under Section 481, Cr.P.C.

3. In the aforesaid facts and circumstances, it is obvious that the accused petitioners have repeatedly tried at least on two occasions to avoid the proceedings which are pending in the trial Court. They had thus, contributed to the delay in disposal of the case and have again tried to delay the proceedings by filing this petition under Section 482, Cr.P.C. This act on the part of the accused petitioners does amount to abuse of the process of the Court. This petition deserves to be rejected and is hereby rejected and it is made clear that if such frivolous petitions are again filed by the accused-persons with a view to avoid the proceedings, which are pending before the Court a serious notice shall be taken and appropriate action may be initiated for the eradication of the evil of filing frivolous petitions with a view to delay the disposal of the case.

4. For the reasons mentioned above, this petition is hereby dismissed.

5. In order the accused may not indulge in repeated exercised calculated to delay the trial of the case by abusing the process of the Court, it is necessary that exemplary cost should be imposed on them. Adoption of such a course is legally permissible in exercise of the inherent powers of this Court under Section 482, Cr.P.C.

6. In Tamil Nadu Electricity Board v. N. Raju Reddiar JT 1997 (1) SC 486 : 1996 AIR SCW 2425, an application seeking clarification of the order was filed after rejection of the petition for review. The Hon'ble Supreme Court not only rejected that application but imposed cost and observed :-

It is salutary to note that Court spends valuable time in deciding a case. Review petition is not and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become in recent time, a practice to file such review petitions as to routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.

xxxxxx xxxOnce the petition for review is dismissed, no application for clarification should be filed, much less with the change of the advocale-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy hand for purity of administration of law and salutary and healthy practice. The application is dismissed with exemplary costs of Rs. 20,000/- as it is an abuse of the process of Court in derogation of healthy practice. The amount should be paid to the Supreme Court Legal Aid Services Committee within four months from today. If the amount is not paid, it should be recovered treating this direction as decree of the Court by the Supreme Court Legal Services Committee. The Registry is directed to communicate this order to the Supreme Court Legal Services Committee.

7. In view of the judgment of the Hon'ble Supreme Court, it is brought to the notice of the Court that any party to the case is deliberately delaying the proceedings by filing repeated applications/petition on one pretext or the other and is thereby abusing the process of the Court. the Court may in exercise of the inherent powers impose exemplary costs to curb the practice of abusing the process of the Court.

Having regard to all the facts and circumstances of the case, each one of the ten petitioners is hereby directed to pay cost to the tune of Rs. 5,000/-. The amount shall be paid to the Rajasthan High Court Legal Aid Committee within four months from today. If the amount is not paid, it shall be recoverable, treating the direction of this Court as degree of the Court by the Rajasthan High Court Legal Aid Committee. The Registry is directed to communicate this order to the Rajasthan High Court Legal Aid Committee for information and necessary action.

8. The learned Magistrate is directed to take every possible step to dispose of the case at the earliest and to refuse adjournments unless it is absolutely necessary to adjourn the case for any just and sufficient cause. The accused petitioners are directed to appear in the trial Court within a period of 15 days from today. If they fail to appear within the period mentioned in this order, their bail bonds and personal bonds shall be forfeited in accordance with law and non-bailable warrants of arrest shall be issued to enforce their attendance. A copy of this order along with record of the lower Court be sent to the lower Court immediately.

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