

Ganpat Lal and ors. Vs. the State

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Court : Rajasthan

Decided On : Aug-18-1998

Reported in : 1999CriLJ563; 1999(2)WLC101

Judge : Amaresh Ku. Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 173(2), 299, 482 and 483; Indian Penal Code (IPC) - Sections 147, 148, 149 and 452; [Constitution of India](#) - Article 21

Appeal No. : Criminal Misc. Petn. No. 574 of 1995

Appellant : Ganpat Lal and ors.

Respondent : The State

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

Advocate for Pet/Ap. : M.L. Choudhary, Adv.

Judgement :

ORDER

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the original record of the case.

2. By this petition Under Section 482, Cr.P.C. the petitioners have prayed that the proceedings of Criminal Case No. 381/93, State v. Ved Prakash and Ors. pending in the Court of Additional Chief Judicial Magistrate No 2, Jodhpur in respect of offences punishable Under Sections 147, 148, 149 and 452, IPC be quashed, because the case is being adjourned from time to time without any progress and some of the co-accused have yet not turned up as the process issued to enforce their attendance could not be served.

3. A perusal of the record of the lower Court shows that the case was instituted on 12-1-97 when the Assistant Public Prosecutor submitted a charge-sheet Under Section 173(2), Cr. P.C. against the petitioners and some other accused persons. Co-accused Kamal Singh and Ganpat Singh absented themselves on 18-9-97, which was the date fixed for hearing of, the arguments and charge. It appears that on account of non-appearance of the accused person, the learned Additional Chief Judicial Magistrate could not make any progress towards the conclusion of the trial of the case.

4. The last order sheet dated 9th November, 1995 written by the Additional Chief Judicial Magistrate No. 2, Jodhpur show that on that day, accused Ved Prakash was absconding. One other accused was also not present. Application was moved on behalf of Ganpat Lal and Ram Niwas to exempt their attendance and the process issued by the Court for enforcing the attendance of co-accused Kamal Singh was not return after service. The Court, therefore, adjourned the hearing to 24th January, 1996. It appears that accused Ved Prakash and Kamal Singh are absconding. The petitioners, namely, Ganpat Lal and Ram Niwas have put in their appearance before the High Court and they are prepared to face the trial in accordance with law.

5. In a criminal case, where more than one accused are involved and are being proceeded against, if the trial of one or more accused persons is delayed unreasonably on account of non-appearance of other accused persons, such delay may be considered for the purpose of finding out if the right to speedy justice available to the accused, who are present before the Court is being violated by delay caused in disposal of the case. In order the fundamental right of the

accused-petitioners under Article 21 of the Constitution to get the criminal case instituted against them disposed of within a reasonable time, may not be defeated, it would be necessary to give a direction in such cases that the trial against the accused, who have put in their appearance should be commenced and concluded as soon as possible and those who are absconding may be proceeded against Under Section 299, Cr. P.C. and they may be tried as and when they appear before the Court or when the warrants issued by the Court for enforcing their appearance are executed.

6. For the reasons mentioned above, in exercise of the powers conferred by Sections 482 and 483, Cr. P.C, it is hereby directed that the learned Additional Chief Judicial Magistrate, No. 2, Jodhpur shall proceed with the case against the petitioners without waiting for the appearance of co-accused Ved Prakash and Kamal Singh. Since, Ved Prakash and Kamal Singh are absconding, the learned Additional Chief Judicial Magistrate No. 2, is directed to proceed against them in accordance with law by taking action in accordance with Section 299, Cr. P.C. and by issuing standing warrants of arrest to enforce their attendance.

7. The petitioners are hereby directed to appear before the learned Additional Chief Judicial Magistrate. No. 2, Jodhpur on September 7, 1998. The record of the case with the copy of the orders passed by this Court be sent to the learned Additional Chief Judicial Magistrate, No. 2, Jodhpur within a period of 10 days from today. After the appearance of the petitioners on 7th September, 1998 in the Court of the Trial Magistrate, the arguments on charge shall be heard within 7 days and after hearing the arguments and charge, the learned Additional Chief Judicial Magistrate, No. 2, Jodhpur shall proceed in accordance with law. The petition is disposed of accordingly.