

Krishan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-29-1998

Reported in : 1999CriLJ799; 1999(2)WLC309

Judge : G.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 238, 240, 246 and 251A; Indian Penal Code (IPC) - Sections 320, 323, 324 and 325

Appeal No. : Cr.M. Pet. No. 978/96

Appellant : Krishan and ors.

Respondent : State of Rajasthan

Advocate for Def. : N.K. Soni, P.P.

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

Disposition : Application allowed

Judgement :

ORDER

G.L. Gupta, J.

1. This misc. petition is directed against the order dt. 30-10-1996 passed by the learned Chief Judicial Magistrate, Sri Ganganagar whereby he dismissed the

application of the petitioners for closing the case in the light of the judgment in the case of 'Common cause'.

2. Mr. Garg contends that the challan was submitted on 7-12 1993 and the trial had not started for more than 2 years, and hence the case of the petitioners fall in the category No. 2(b) of the Judgment of the Apex Court and the proceedings are liable to be quashed.

3. Learned Public Prosecutor contends that the trial of a case instituted on a police report starts Under Section 238 Cr.P.C. i.e. on the date the accused appears before the Magistrate and the copies are supplied to him and hence the petitioner's case is not covered by the Common Cause case. He relies on the case of V.C. Shukla v. State through CBI AIR 1980 SC 962 : 1980 Cri LJ 690.

4. I have carefully considered the above arguments. In the case of 'Common cause' A Registered Society Through its Director v. Union of India 1996 Cr LR (SC) 430 : 1996 Cri LJ 2380 the Apex Court has issued certain directions which are to be complied with by the criminal courts in the country. Direction No. ' (b) is relevant for this case which reads as follows at page 2381 :-

2 (b) Where the cases pending in criminal courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the court - and if in such cases trial have still not commenced, the criminal court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

5. In the instant case it is not in dispute that the challan was submitted on 7-12-1993. It is also evident from the perusal of the file that the offences for which challan has been filed are Sections 325/323 and 324 IPC, which are compoundable with the permission of the Court as per sub-sec. 2 of Section 320 IPC. Charges had not been framed till 30-10-96. The question for determination is when the trial of the case commences; whether on the date the challan is filed or on the date the charges are framed.

6. The Apex Court in the case of V.C. Shukla (supra) has observed at para No. 38 that the proceedings starting from Section 251-A in the previous Code and Section 238 in the Code of 1973, do not amount to an inquiry at all but amount to the starting of a trial straightway. In my opinion, these observations are to be read in the context then were made. In the case of 'Common cause' A Registered Society Through its Director v. Union of India 1997 Cr.L.R. (SC) 132 : 1997 Cri LJ 195, the Apex Court has clarified the meaning of the word 'commencement of the trial. It has been observed as follows at page 195 of Cri LJ :-

The phrase 'pendency of trials' as employed in paragraphs from 1 (a) to 1 (c) and the phrase 'non-commencement of trial' as employed in paragraphs from 2 (b) to 2 (0 of the earlier judgment of the year 1996 referred to above shall be construed as under :-

(i) xxxxxxxx

(ii) In cases of trials of warrant cases by magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed Under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrate when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused Under Section 246 of the Code of Criminal Procedure, 1973.

(Emphasis supplied)

7. There is merit in the contention that when the matter is considered with reference to the directions of the Apex Court in the case of 'Common cause' 1996 Cr LR (SC) 430:(1996 Cri LJ 2380), it will have to be decided in the light of the clarification in the second judgment of the 'Common cause', 1997 Cr LR (SC) 132 :(1997 Cri LJ 195). In view of the clarification of the Supreme Court, it cannot be accepted that the commencement of the trial should be treated as the date on which the challan is filed by the police.

8. The date of the commencement of the trial of a case may be considered different for some purposes as has been held in the case of V.C. Shukla (supra), but when the court considers the application of the 'Common cause' case directions, there is no escape but to follow the clarificatory judgment in the second case. It may be noticed that if it is accepted that the date of the challan is the date of commencement of the trial then the directions given by the 'Common cause' case cannot be complied. In no case it can be said that the trial has not commenced and as such the benefit of the direction cannot be availed of by the accused. The interpretation will tantamount to refuse to comply with the directions of the Apex Court. In my opinion, it has to be accepted that the date of the commencement of the trial should be treated as the date of framing of the charge Under Section 240 IPC for considering the application of the 'Common cause' case.

9. In the instant case, the charge has not been framed against the accused for more than two years. There was thus no commencement of the trial for two years.

10. The next question to be considered is whether there was fault on the part of the accused in protraction of the trial. A perusal of the order-sheets shows that the accused were present on all these days. If the accused were not present in person, exemption application was moved and the same was allowed. The case was adjourned mostly on the ground that the Presiding Officer was not present or that he had gone to hold Camp Court elsewhere. On one date request was made for adjournment but it is not stated in the order-sheet that on the request of the accused the case was adjourned. In these circumstances, it cannot be said that the accused had protracted the trial. In view of the above discussion, the petitioners cannot be denied the benefit of the direction No. 2 (b) of the Apex Court judgment in the case of 'Common Cause' The application deserves to be allowed.

11. Consequently, this petition is accepted. The order of the trial Court is set aside and the proceedings against the accused in the trial Court are directed to be closed. The petitioners shall stand discharged of the offence.