

Surendra Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-09-2001

Reported in : 2000(3)WLC654; 2002(1)WLN395

Judge : B.J. Shethna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311, 397(2), 399(3) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 420, 467, 468 and 471

Appeal No. : S.B. Criminal Misc. Petition No. 234 of 2001

Appellant : Surendra Kumar

Respondent : State of Rajasthan

Advocate for Def. : S.R. Dave, Adv.

Advocate for Pet/Ap. : G.R. Punia, Adv.

Disposition : Petition dismissed

Judgement :

Shethna, J.

1. Following important questions of law are arising in this petition:-

(1) Whether order passed by the Trial Court rejecting an application under Section 311 Cr.P.C. filed by the accused persons, to recall the witnesses for the purpose of further examination is an interlocutory order or not?

(2) Whether, this Court can exercise its inherent powers under Section 482 Cr.P.C. against such interlocutory order when the Sessions Court has rejected the revision filed by the accused solely on the ground that no revision would be maintainable under Section 397(2) Cr. P.C.?

(3) Whether this Court can entertain the petition against such interlocutory orders passed by the trial court under Section 482 Cr. P.C.?

2. The present accused petitioners along with one more accused are facing trial for offences punishable under Section 420, 467, 468, 471 read with 120-B I.P.C. of committing forgery and cheating the Government for lakhs of rupees way back in 1981 before the Court of Additional Chief Judicial Magistrate, CBI cases, Jodhpur. The case is pending against them since 1982 before the Court at Jaipur which was later on transferred to Jodhpur.

3. It is unfortunate that nearly a period of 20 years has passed after the commission of an offence and the case registered against them but same is yet not concluded for several reasons, even though the prosecution closed its evidence after examining as many as 25 witnesses who were effectively cross examined in detail by the counsel for the accused.

4. The application dated 16.1.2001 was filed under Section 311 Cr.P.C. on behalf of the present accused petitioners before the trial court for recalling 3 witnesses namely, (1) Satish Chandra Kik, (2) Subash Chandra Mishra and (3) Satish Chandra Saxena P.W. 16, P.W. 17 and P.W. 19 respectively for the purpose of further cross-examination on the ground that by mistake, they were not properly cross-examined regarding the disputed documents. If the said request is not granted, then it will adversely affect the accused in their defence. The said application was straneously objected by learned public prosecutor before the trial court on the ground that by 16.1.2001, as many as 25 witnesses were examined and the aforesaid 3 witnesses were also cross-examined at great length by the

learned counsel appearing for the accused and it is only with a view to delay the trial, which is pending before the trial court since 1982, this application is submitted. It was also objected on the ground that the intention of the learned counsel for the accused is to delay the proceedings on one or the other grounds and in the past also, lime and again, number of revisions were filed by him on behalf of the accused which were also dismissed, therefore, to recall the witnesses in this case, would not be helpful to the Court to arrive at the just decision in the case.

5. The Trial Court after considering the entire material on record came to the conclusion that all the aforesaid witnesses were cross examined in detail by the learned counsel for the accused and the application under Section 311 Cr.P.C. was submitted in the case only with an intention to delay the trial. The Trial Court also considered the judgment of the Hon'ble Supreme Court in case of Rajendra Prasad v. Narcotic Cell (1), cited by learned counsel for the petitioners and held that the facts of Rajendra Prasad's case (supra) have no relevance whatsoever in the Instant case as the facts of that case were totally different than the facts of the present case and accordingly, the trial court dismissed the application under Section 311 Cr.P.C. on 7.3.2001.

6. This order was challenged by the petitioners in revision before the Court of Sessions Judge, Jodhpur which was dismissed by the learned Sessions Judge on 24.4.2001 only on the ground of its maintainability because according to him, the impugned order passed by the trial court was an interlocutory one and no revision would lie against such order as provided under Section 397(2) Cr.P.C. For dismissing the revision petition on this ground, the learned Sessions Judge has relied upon the following judgments of this Court:-

(1) Ummed Singh v. Devi Singh (2), and

(2) Jatnail Singh v. State of Rajasthan (3).

7. There is a specific bar of second revision under Section 399(3) Cr.P.C., therefore, the petitioners have filed this petition under Section 482 Cr.P.C. before this Court and have prayed that the impugned order dated 7.3.2001 passed by the

learned A.C.J.M. (CBI), Jodhpur in criminal case No. 9/99 as well as the order dated 24.4.2001 passed by the learned Sessions Judge, Jodhpur in criminal revision be quashed and set aside and the application filed by them Under Section 311 Cr.P.C. be allowed and the Trial Court be directed to recall the aforesaid 3 witnesses for the purpose of further cross-examination.

8. Learned counsel Mr. Dave for respondent CBI raised a preliminary objection regarding maintainability of this petition under Section 482 Cr.P.C. on the ground that there is a specific bar of second revision petition under Section 399(3) Cr.P.C. and with a view to circumvent that bar, the petitioners have filed this petition under Section 482 Cr.P.C., therefore, this Court should not entertain this petition. However, learned counsel Mr. Punia for the petitioners vehemently submitted that in view of the specific bar of second revision under Section 399(3) Cr.P.C., he had no alternative but to file this petition under Section 482 Cr.P.C., therefore, in the interest of justice, this Court should entertain it because by rejecting an application under Section 311 Cr.P.C., the trial court has done great injustice to the accused. In support of his submission, learned counsel Mr. Punia has relied upon the judgment of Hon'ble Supreme Court in case of Krishnan and another v. Krishnaveni and anr. (4).

9. In my considered opinion, the object of criminal trial is to render prompt public justice, to punish the criminals and to see to it that the trial is concluded as expeditiously as possible before the memory of the witnesses fades out. This court can take judicial notice of the fact that a trend had developed to delay the trial by the accused on one or the other ground after they are out on bail so that ultimately, they are acquitted either by threatening or inducing the witnesses. Such practice was required to be curbed, therefore, with a view to ensure prompt public justice in the criminal trial, the Legislature in its wisdom introduced two major provisions in Cr.P.C. (1) Section 397(2) under which revision against any interlocutory order passed in appeal, enquiry, trial or other proceedings was barred and (2) Section 399(3) wherein finality is attached to the order passed by the revisional court and second revision at the instance of same party is barred.

10. Thus, when there is a specific bar of revision against the interlocutory order under Section 397(2) Cr.P.C. or there is a specific bar of second revision under Section 399(3) Cr.P.C., then ordinarily this Court would not like to exercise its jurisdiction under Section 482 Cr.P.C. and allow such persons to circumvent the specific bar of maintainability of revision.

11. It is true that this Court has inherent powers but the same is required to be exercised sparingly so as to avoid needless multiplicity of proceedings and unnecessary delay in trial and protraction of proceedings. Such powers under Section 482 Cr. P.C. can only be exercised by this Court when on examination of the record, it comes to the conclusion that either grave mis-carriage of justice is caused or it is an abuse of process in passing the impugned orders or the required statutory procedure was not followed by the courts below. In such type of cases, only to meet the ends of justice or to prevent the abuse of process of law, this Court can exercise its powers under Section 482 Cr.P.C. otherwise not.

12. From the impugned order passed by the trial court rejecting the application filed by the petitioners under Section 311 Cr.P.C., it is clear that in the instant case an application was filed at the fag end of trial when all the 25 witnesses were examined by the prosecution, only with an intention to further delay the proceedings in the trial which is already sufficiently delayed by about 20 years. Perhaps, because of such type of cases only, under the new Code of Criminal Procedure, 1973, the legislature has incorporated the provisions of Section 397(2) and Section 399(3).

13. However, learned counsel Mr. Punia relying upon the judgment of Hon'ble Supreme Court in case of Rajendra Prasad (supra) submitted that the trial court should have been more magnanimous in allowing the application submitted by the accused for recalling those witnesses for their further cross examination because due to his mistake, he could not effectively cross examine those 3 witnesses and by that application, he wanted to rectify his mistake.

14. It is true that the Trial Court has not discussed in detail the aforesaid judgment of Rajendra Prasad's case and simply rejected the application by holding that the facts of Rajendra Prasad's case are totally different than the facts of this case.

However, I must state that learned counsel Mr. Dave rightly submitted that this judgment of Hon'ble Supreme Court was rendered on the peculiar facts of that case where due to inadvertence, the prosecution committed some mistakes which were required to be rectified and in light of that, the Hon'ble Supreme Court has made the aforesaid observations and it cannot be relied upon by the accused, who are indulging in the tactics of only delaying the trial.

15. In case of Rajendra Prasad (supra), the facts were totally different. In that case, an application was submitted by the prosecution under Section 311 Cr.P.C. for summoning the witnesses which was granted by the trial court. The same was challenged before the Delhi High Court and without considering the fact that it was an interlocutory order and no revision would lie under Section 397(2) Cr.P.C., the High Court dismissed the revision on merits. The same was challenged before the Hon'ble Supreme Court by the accused on the ground that a lacuna in the prosecution case cannot be allowed to be filled up by the trial court by granting such application under Section 311 Cr.P.C. In that context, the Hon'ble Supreme Court has observed that, 'A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by the Public Prosecutor during the trial either in producing relevant materials or in eliciting relevant answers from witnesses. The adage to err is human' is the recognition of possibility of making mistakes to which human are prone. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up....If proper evidence was not adduced or arelevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count error committed by the parties or to find out and declare who among me parties performed better.'

16. Learned counsel Mr. Punia had shown me the evidence of the aforesaid 3 witnesses who were fully cross examined by him before the trial court and the application made by him under Section 311 Cr.P.C., which was filed only at the lime of conclusion of trial when almost all 25 witnesses were examined. It appears from the record that an application was also submitted by me learned P.P. to close the prosecution evidence at the time when this application under Section 311

Cr.P.C. was rejected by the trial court.

17. In my considered opinion, the trial court was right in holding that it was nothing but a delaying tactics adopted by the accused persons with a view to delay the trial which was sufficiently delayed for about twenty years.

18. Rejecting the application filed under Section 311 Cr.P.C. to recall the witnesses is an interlocutory order and the same view is taken by this Court in its decisions namely, (1) Ummed Singh v. Devi Singh (supra), and (2) Jarnail Singh v. State of Rajasthan (supra). Thus, this is a settled legal position that such an order rejecting application under Section 311 Cr.P.C. is an interlocutory order. Once it is held that the impugned order passed by the trial court is an interlocutory order then it cannot be said that the learned Sessions Judge was wrong in dismissing it on the ground that no revision would lie against such interlocutory order under Section 397(2) Cr.P.C. Hence, it cannot be said that the learned Sessions Judge committed any error while rejecting the revision only on the ground of its maintainability.

19. The next question is, Can this Court exercise its powers under Section 482 Cr.P.C. against such interlocutory order passed by the trial court more particularly, when the Sessions Court rejected the revision petition?

20. In my considered opinion, ordinarily this Court will not interfere with such order unless and until it is pointed out by the applicants that while passing the impugned order, the trial court has committed grave error which has resulted into a grave mis-carriage of justice or there was an abuse of process of law, which is none in the instant case.

21. At this stage, learned counsel Mr. Dave for respondent CBI submitted that nowadays there is a growing tendency to delay the trial by the accused who are on bail in serious economic offences like cheating, misappropriation of lacs of rupees etc. He submitted that though he is the only standing counsel of CBI in High Court at Jodhpur but in no case he is served with an advance copy by any accused and the ex-parte stay against the trial is obtained from this court by the accused and thereafter the matters remained in cold storage for years together He submitted

that in this case also, an advance copy of the petition with the impugned orders passed by the courts below were not served upon him and it is only because of the order passed by this Court yesterday, i.e. on 8.5.2001 the learned counsel for the petitioners supplied copy of him. He, therefore, submitted that the Registry be directed not to place any such matters against CBI or the State till the advance copy of it is served to the standing counsel of CBI in the High Court or learned P.P. for the State.

22. He also prayed for exemplary costs in this petition on the ground that only with a view to delay the further proceedings in the trial, which is sufficiently delayed for about twenty years before the trial court, the petitioners have filed this false and frivolous petition. In support of his submission, he has relied upon the judgment of Hon'ble Supreme Court In case of Mary Angel and ors. v. State of Tamil Nadu (5).

23. Having regard to the peculiar facts and circumstances of the case, I am of the opinion that while dismissing this petition, the petitioners should be saddled with exemplary costs as the application filed by them before the Trial Court under Section 311 Cr.P.C. itself was false and frivolous and the same was filed only with a view to delay the trial which is pending before the trial court since last 20 years. They filed revision petition against the order passed by the trial court before the Sessions Court though it was an interlocutory order. When the learned Sessions Judge rejected that revision petition on the ground that it was not maintainable because it was filed against an interlocutory order, then they filed this petition though there is a specific bar of second revision. When the counsel for the accused had already cross examined all the witnesses including those three witnesses in detail, then there was no question of filing such application under Section 311 Cr.P.C. before the trial court and that too at the fag end of the trial when the prosecution was going to close its evidence.

24. Learned counsel Mr. Punia, who is appearing in this petition, is also appearing for the petitioners before the trial court. He had an opportunity to effectively cross examine all the witnesses including those three witnesses. He wanted to recall them for the purpose of their further cross examination on the ground that by mistake he could not cross examined them regarding the document in question.

This is nothing but an attempt to further delay the proceedings. If such applications are granted by the Court, then in my considered opinion, trial would not be over for years together and the accused, who are on bail, may just go on enjoying their freedom by simply delaying the trial on such excuses.

25. I am of the considered opinion that the legal profession must be purified from such abuses of court procedure, Tactics of filibuster, if adopted by an advocate, is also professional misconduct. The same is required to be checked at the earliest by way of imposing exemplary costs in the matters,

26. Recently, the Hon'ble Supreme Court deprecated the practice of seeking adjournments by the Advocates of the accused for postponing the examination of the witnesses who were present in the Court. The Hon'ble Supreme Court observed that, 'Seeking adjournments for postponing the examination of witnesses who are present in the court even without making other arrangements for examining such witnesses is a dereliction of advocate's duty to the court as that would cause much harassment and hardship to the witnesses....They (the witnesses) cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned.'

27. If the application filed by the accused under Section 311 C.P.C. to recall those three witnesses for the purpose of their cross-examination is granted, on the ground that by mistake of the counsel of the accused, some questions were not put in the cross-examination, then it would cause undue harassment and hardship to those three witnesses. They cannot be time and again called again and again before the Court on the whims and caprices of the Advocate of the accused.

28. Having regard to the peculiar facts and circumstances of the case, I am more than satisfied that the application filed by the counsel for the accused before the trial court under Section 311 Cr.P.C. itself was frivolous. Though it was rejected by the trial court on merits and also by the Sessions Court on its maintainability, this petition was filed before this Court in its inherent jurisdiction under Section 482 Cr.P.C. which took most valuable time of this Court of more than three hours. Therefore, I am of the considered opinion that this is a fit case in which exemplary costs should be awarded.

29. Before parting I must state that whenever the petitions are filed under Section 482 Cr.P.C. with a view to circumvent the bar of revision under Section 397(2) Cr.P.C. against the interlocutory order and bar of second revision under 399(3) Cr.P.C., then ordinarily this court should be slow in exercising its powers under Section 482 Cr.P.C. Such powers should be exercised sparingly in a rarest of rare cases where there is grave mis-carriage of justice is done or there is an abuse of process by courts below while passing the impugned orders otherwise not.

30. I have also noticed that in number of important cases without serving copy of petition under Section 482 Cr.P.C. to the respondent State or CBI, ex-parte interim orders have been obtained by the accused and because of that the cases could not be decided by the trial court for number of years, therefore, the Registry is henceforth directed not to place any petition for admission/orders including stay order unless an advance copy of petition is either served upon the learned P.P. of the State of Rajasthan or the standing counsel of C.B.I., as the case may be.

31. With these observations and directions, this petition is dismissed with exemplary costs of Rs. 1,500/- which is to be paid by each of the petitioner accused to the respondent State within one month from today.

32. Stay petition is also dismissed.

33. A copy of this order be sent to the trial court forthwith with a direction to decide the case as early as possible because it is sufficiently delayed.

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