

Govind Sharma Vs. State

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Court : Rajasthan

Decided On : Apr-27-2001

Reported in : 2007(2)WLN713

Judge : B.J. Shethna, J.

Appeal No. : S.B. Criminal Misc. Petition No. 122 of 2001

Appellant : Govind Sharma

Respondent : State

Judgement :

B.J. Shethna, J.

1. While issuing notice on this petition, my learned brother Hon'ble Shri N.P. Gupta, J. on 8.3.2001 by an interim order directed the learned trial Judge to take all possible steps immediately to ensure that the witnesses are positively examined on 24.4.2001 and the matter was kept on 27.4.2001 i.e. today. The learned Magistrate was also directed to give an explanation as to why for such a long time, very often process was not issued to the witnesses and that the matter was delayed.

2. When the matter was called out in the morning, it was stated at the bar by learned counsel Mr. Garg for the petitioner that 20 witnesses were called to remain

present to depose before the Court on 24.4.2001 and out of them only 5 witnesses turned up and they were examined by the learned Trial Magistrate and the next date of 29.5.2001 was given in the matter. However, though directed the learned Magistrate had not sent his explanation by today, therefore, the office was asked to enquire about the same on telephone and the matter was kept in second sitting after recess.

3. The learned Magistrate Mr. Rameshwar Vyas was telephonically contacted in the matter and as per the information given by him, '20 witnesses were called but only 5 witnesses turned up on 24.4.2001 and, all of them were examined. He has given three different dates for remaining 60 witnesses to be examined in the case pending before him. It is also stated that he is sending his explanation as ordered by this Court but the same has not despatched by him so far.

4. Once the learned Magistrate was directed by this Court to offer his explanation by today, then it was his duty to furnish the explanation without fail. Due to some reasons, if he was unable to sent his explanation, then he should have applied for extension of time in submitting his explanation but not submitting his explanation without seeking any extension of time is not only a gross indiscipline on the part of the learned Magistrate but it may also amount to a prima facie case for contempt of court. However, no such action is taken at present because it has been stated that he is despatching his explanation at the earliest.

5. This brings me to the merits of the case. It was submitted by learned counsel Mr. Garg for the petitioner that it is a case of protracted trial and the accused should not be made to suffer any more because more than 13 years period has passed by now after the alleged commission of offence by the accused.

6. In ordinary circumstances, this plea would have been accepted but having regard to the seriousness of the offences alleged to have been committed by the accused and the order passed by my learned brother Hon'ble Shri N.P. Gupta, J. on 8.3.2001 directing the trial court to ensure the presence of the witnesses and examine them on 24.4.2001 and the fact that atleast 5 witnesses have been examined and others are going to be examined on three different dates as per the information, therefore, at this stage. I am no inclined to entertain this petition.

7. In spite of the full co-operation of the accused, if the trial is not concluded within a reasonable time, then the petitioner accused can first make grievance before the trial court, then before this Court. At that time, such a grievance may be considered.

8. With these observations, this petition is dismissed at this stage.

9. Stay petition is also disposed of.

10. However, looking to the conduct of the trial Judge, the Registrar General is directed to initiate necessary departmental proceedings against the Additional Civil Judge (Upper Division) and Additional Chief Judicial Magistrate No. 2, Bikaner, Shri Rameshwar Vyas, for not complying with the order passed by Hon'ble Shri N.P. Gupta, J. on 8.3.2001 in not submitting his explanation by today and for the gross delay in the trial. '

11. A copy of this order be kept on the personal file of the Additional Civil Judge (Upper Division) and Additional Chief Judicial Magistrate No. 2, Bikaner.

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