A. Radhakrishnan Vs. Ito

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Court : Chennai

Decided On : Jun-18-2001

Reported in : [2002]253ITR676(Mad)

Appeal No. : Criminal Revision Petition No. 973 of 1998 and Crl. M. P. No. 7250 of 1998 18 June 2001

Appellant : A. Radhakrishnan

Respondent : ito

Advocate for Pet/Ap. : K. P. Anantha Krishnan, *for the Assessee* Ramaswamy K, Special Public Prosecutor, *for the Revenue*

Judgement :

N. Dhinakar J.

This revision is directed against the orders of the learned Additional Chief Metropolitan Magistrate (Economic Offences-1), Chennai, allowing the petition filed under sections 246(6) and 311 of the Criminal Procedure Code, 1973 by the respondent-complaintant The proceedings against the petitioner-accused were initiated by way of a private complaint.

After the complaint was taken on file, the witnesses, P.Ws. 1 to 5, mentioned in the complaint, were examined and thereafter, the petitioner was questioned. The learned magistrate finding that there is a prima facie case framed a charge and the

trial proceeded. After completion of the trial, the petitioner was questioned under section 313 of the Criminal Procedure Code, on the incriminating circumstances appearing against him. After the questioning of the petitioner, the prosecution filed a petition under sections 246(6) and 311 of the Criminal Procedure Code, with a prayer that witnesses Nos. 6 to 10 mentioned in the complaint may be permitted to be examined. The learned magistrate allowed the petition, which is under challenge in this revision.

Learned counsel appearing for the petitioner submits that the learned magistrate ought not to have allowed the petition filed by the respondent since by allowing the said petition, he only allowed the respondent in this revision to fill in the lacunae in the prosecution.

It is the admitted case that the prosecution only examined witnesses Nos. 1 to 5 mentioned in the complaint. The prosecution did not take any steps to examine witnesses Nos. 6 to 10 at the time of trial. There is no material on record to indicate that the prosecution could not secure the presence of those witnesses during the pendency of the trial. After the trial was over, the petitioner was questioned under section 313 of the Criminal Procedure Code. The respondent then filed a petition to examine witnesses Nos. 6 to 10 mentioned in the complaint submitting that the examination of those witnesses is necessary to prove the allegations. It is dear that the petition was filed after the petitioner was questioned. The petitioner was also called to enter upon his defence and produce witnesses and at the stage, the respondent filed a petition. It looks from the averments made in the petition that the said petition was filed only with a view to fill in the lacunae.

The judgments of the Supreme Court relied on by the trial court for allowing the petition will not apply to the facts of this case and in fact, the judgment of the Supreme Court in jamatraj Kewalji Govani v. State of Maharashtra (1968) LW Crl. 65 is not helpful to the respondent as the Supreme Court held that the prosecution cannot be allowed to rebut the defence evidence unless the prisoner brings forward something suddenly and unexpectedly which is not so in their case. The judgment of the Supreme Court in MohanIal Shamji Soni v. Union of India (19911 LW Crl. 284, is also of no use to the respondent as the Supreme Court has only

stated that the prosecution can be allowed to &amine; withnesses at any stage if by such non-examination, the judgment shall be rendered on inchoate, inconclusive and speculative presentation of facts and the ends of justice will be defeated.

In the present case, the respondent's case is not that by such non-examination, the judgment will be rendered on inchoate, inconclusive and speculative presentation of facts. It is to be seen that in Govinda Reddy v. State (1991) LW Crl. 42, a single judge of this court held that the prosecution, having failed to do so, at several stages, cannot be now permitted to fill in a lacunae after the defect was pointed out. It is rather unfortunate that the Public Prosecutor in charge of the case, had not conducted the prosecution with care. Such instances are not infrequent, but then on account of it, the accused cannot be made to suffer prejudice, by allowing the prosecution to ratify such laches by having recourse to section 311 of the Criminal Procedure Code.

In N. Lakshmanan v. Tamilnadu Electricity Board (1991) LW Crl. 475, it is pointed out that the very width of power under section 311 of the Criminal Procedure Code, requires corresponding caution before exercise of the power and the only criterion to exercise this power is that it should appear to the court that the evidence sought to be placed was essential to the just decision of the case.

When the above principles of law are applied to the facts of the present case, I feel that the learned magistrate has committed an error in allowing the petition filed by the respondent under section 311 of the Criminal Procedure Code, to enable the prosecution to fill in the lacunae, though the respondent had an opportunity at the time of trial to examine the witnesses. The revision is allowed and the order of the learned magistrate is set aside. The trial court will dispose of the case according to law on the evidence recorded. Consequently, Crl. M. P. No. 7250 of 1998 is M. P. No. 7250 of 1998 is dosed.