

Ramesh Chander Vs. State

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Court : Jammu and Kashmir

Decided On : Aug-01-1991

Reported in : 1992CriLJ1411

Judge : V.K. Gupta, J.

Acts : Ranbir Panel Code - Section 304

Appeal No. : Bail Appln. 51/91

Appellant : Ramesh Chander

Respondent : State

Advocate for Pet/Ap. : M.A. Goni, Adv. and; P.R. Sharma, Addl. A.G.

Judgement :

ORDER

V.K. Gupta, J.

1. Several opportunities were given to the respondents to file objections, including the last opportunity. Till date, however, they have not filed the objections.

This is an application for grant of bail by the petitioner Romesh Chander in pending trial under Section 304 RPC. Romesh Chander is facing trial along with three other persons, all the four accused had approached this court earlier also in

bail application No. 182/89 for grant of bail and this Court vide order dtd. 31-1-1989 had released the other three accused on bail. In so far as Ramesh Chander was concerned, this Court had declined his prayer for grant of bail and had observed that such prayer would be considered by the trial Court after recording the statement of the eye witnesses. While disposing of the bail application, the Court had also observed then, that it came out from the F.I.R. that petitioner Romesh Chander had inflicted injuries with sharp edged weapons to Biso Ram deceased.

2. Mr. Goni, learned counsel appearing for the petitioner has drawn my attention to various orders passed from time to time by the trial Court and has submitted that in spite of the trial remaining pending for a long time, the prosecution has negligently and callously not concluded its evidence with the result that the petitioner is languishing in custody for no fault of his.

3. During the course of the hearing of this application, I came across an order dt. 14-2-1991 passed by the 1st Addl. Sessions Judge, Jammu, whereby he had refused to hear and try this case on the ground that the criminal clerk of his court was related to one of the accused persons and he had accordingly referred the matter to Sessions Judge Jammu, who transferred the case to Addl. Sessions Judge, Jammu. I had called the explanation of the 1st Addl. Sessions Judge, Jammu. he has submitted his explanation wherein it has been pointed out that on 14-2-1991 Prakash Chand and Satish Kumar PWs were present in the court. Prakash Chand PW who is also complainant in the case, pointed out that Jamit Raj accused No. 4 was the cousin of Sardari Lal, criminal clerk of the Court of 1st Addl. Sessions Judge, Jammu. The Presiding Officer also explained that in order to allay the apprehensions of the complainant and also in the interest of justice and fitness of things the case was sent back to the learned Sessions Judge with a request to transfer the same to some other court.

4. After giving a careful consideration to the explanation submitted by the 1st Addl. Sessions Judge, Jammu I say that I am in total disagreement with the approach adopted by him for not trying this case himself and in submitting the file to the learned Sessions Judge, Jammu for transferring the same to some other Court.

The Institution of judiciary and its independence is not so fragile and weak that merely because a criminal clerk in a Sessions Court happens to be related to one of the parties that the Presiding Officer should feel shy of trying a case and on that ground alone should shirk from his responsibility entrusted to him by the Constitution. The learned Ist Addl. Sessions Judge by refusing to hear this case on the ground that one of his clerks was related to one of the parties has shirked from his responsibility and has shown a weakness in his mind and soul which was not expected from a senior judicial officer. Members of the Judiciary are expected to be bold, non-partisan and above these petty considerations.

5. I accordingly direct that the order of the Sessions Judge, Jammu transferring this case to the Addl. Sessions Judge, Jammu be set aside and quashed and I also direct that the 1st Addl. Sessions Judge, Jammu shall try this case himself notwithstanding the fact that his criminal clerk is related to one of the parties.

6. Coming to Mr. Goni's grievance about the delay in the trial and the examination of the prosecution witnesses, I direct that the entire prosecution evidence shall be produced by the prosecution in one go. The trial shall re-commence from 21st August, 1991 and shall continue on day to day basis, without any break whatever till the entire prosecution evidence is produced.

7. The prosecution shall, on its own responsibility produce its entire evidence on 21-8-1991 in the trial court and if more than one witness are produced and the recording of the evidence cannot be concluded on 21-8-1991 the trial Court shall continue with the recording of the evidence thereafter till it is concluded. If the prosecution fails to produce any witness on 21-8-1991, its right to produce evidence shall stand closed on that date itself and the petitioner shall be, in that event, granted bail by the trial Court on such conditions that it decides to impose in its wisdom. After the closure of the evidence, the trial Court shall endeavour to conclude the trial very expeditiously.

8. The file of the trial Court shall be sent back immediately by the Registry, to the Ist Additional Sessions Judge, Jammu under intimation to the Addl. Sessions Judge Jammu. The parties through the learned counsel are directed to appear before Ist Addl. Sessions Judge, Jammu on 21-8-1991.

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