

State Vs. Prithi Singh and ors.

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Court : Jammu and Kashmir

Decided On : Apr-06-1981

Reported in : 1981CriLJ1348

Judge : Mufti-Baha-Ud-Din Farooqi, Acting, C.J.

Appellant : State

Respondent : Prithi Singh and ors.

Judgement :

ORDER

Mufti-Baha-Ud-Din Farooqi, Acting, C.J.

1. The learned Addl. Sessions Judge, Jammu has recommended that the order dated 20-7-1978, passed by the Munsiff Judicial Magistrate 1st Class. Jammu, partially closing the prosecution evidence be set aside and the magistrate be directed to issue process against the witnesses whose evidence has been closed.

2. An objection has been taken in regard to the maintainability of the revision, out of which this reference has arisen, on the ground that the impugned order of the magistrate is merely an interlocutory order and as such, it is not revisable. In this, it is assumed that every order which is passed at any intermediate stage of any enquiry, trial or other proceeding is merely an interlocutory order. The assumption is not correct. An order which though passed at an intermediate stage of an enquiry, trial or other proceeding would be a final order if it decides the

controversy in the case wholly or in part or finally determines any right or claim of any party to such enquiry, trial or any other proceeding. Now, the right to prosecute carries with it the right to produce evidence in support of the charge and consequently if the right to produce the evidence is denied wholly or in part that would certainly amount to adjudication of a right. It necessarily follows that an order closing the evidence wholly or in part is a final order and not merely an interlocutory order. The preliminary objection has no merit in it and is hereby repelled.

3. Coming to the merits of the order, I agree with the learned Addl. Sessions Judge, that the prosecution was not wholly to blame for the delay which has occurred in the production of the evidence. The accused cannot disclaim their share in it. They have not cooperated with either the prosecution or the court in getting the evidence recorded in time. In the circumstances, the trial magistrate was not justified in partially closing the evidence. The learned Addl. Sessions Judge is right in saying that the order is not sustainable in law and must be quashed.

4. I, therefore, allow this reference and set aside the impugned order and direct the trial magistrate to issue process against the witnesses and proceed with the trial in accordance with law, The parties are directed to appear before the trial magistrate on 24th of April, 1981.