State Vs. Mohd Rashid

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Court : Jammu and Kashmir

Decided On : Mar-27-2002

Reported in : 2003(1)JKJ589

Judge : B.L. Bhat, J.

Acts : Code of Criminal Procedure (CrPC) , Svt. 1989; ;Code of Criminal Procedure (CrPC) - Section 540

Appeal No. : Criminal Revision No. 32/2001

Appellant : State

Respondent : Mohd Rashid

Advocate for Pet/Ap. : Nemo

Judgement :

B.L. Bhat, J.

1. This reference is made by the Sessions Judge, poonch whereby he has recommended to this court for setting aside the orders recorded by the learned trial Magistrate for closing of evidence of the prosecution and also dis-al-lowing the application under Section 540 Cr. P.C. This reference order stem out of those circumstances which is summarised as:-

2. That on 29.12.1998 one Abdul Samad Dhar, Forest Guard came to submit a report to the DFO, office, Poonch alleging therein, that at 2.p.m on 29.12.1998 he alongwith Mohd Rashid while taking round of Forest Compartment No 230-H heard sound of cutting of trees. On reaching the place wherefrom the said sound was coming he inquired from the accused about the damage of the Forest but they assulted him and inflicted injuries on his person with Lathies. The DHO vide endorsement dated 29.12.2000 came to forward this report to SHO, Haveli Police Station, consequently a case under FIR No: 156/98 came to be registered for offences punishable under Section 332/353 RPC and for offence under Section 6/39 of theForest Act. After usual investigation, the accused, namely Mohd Rashid came to be challaned before the court of learned Judicial Magistrate Poonch. On 25.5.2000, the trial court came to framecharge for offences under Section 379/332 RPC and under Section 6/39 of the Forest Act against the accused, the charge so framed was read over and explained to the accused who pleaded not guilty and the prosecution was according directed to examine the witnesses to substantiate their case against the accused and the case was adjourned to 26.06.2000. On this date accused absented and the case was adjourned to 29.07.2000, on this date also the accused absented and case came to be adjourned to 25.8.2000. Therefore, the prosecution failed to examine its witnesses on three dates of hearing fixed in the case. On 15.11.2000 it appears that PW Mohd Rashid and Abdul rashid were present but due to the absence of learned SPO their statements were not recorded and they were directed to cause their appearance on the next date. On this date summons also came to be issued in thename of medial witness, namely, Dr. Sahanaj Bhatti and the case came to be adjourned on 29.11.2000. On this date accused again absented and case came to be adjourned to 14.12.2000. On this date prosecution appears to have examined PWs2,3 and 7 and the case was adjourned to 4.1.2001 with a direction to the SPO to produce the remaining witnesses and order was passed for the issuance of bailable warrants of arrest in the sum of Rs. 2000/- in the name of medical witness Dr. Sahanaz Bhatti. On 4.1.2001 medical witness Dr. Sahanaz and PW-5, Mohd Latif caused their appearance and their statements were recorded and the case came to be adjourned to 23.1.2001. On this date prosecution failed to examine any witness so the impugned order for closing of prosecution evidence came to be passed. It also

appears that on 24.4.2001 prosecution approached the trial court through the medium of an application seeking indulgence for examination of PW Abdul Samad, Forest Guard and the Investigating Officer in terms of Section 540 Cr.P.C. This application came to be dismissed by the trial court on 24.4.2001. Aggrieved by the said orders, State came to prefer a revision petition before the learned Sessions Judge, Poonch who by virtue of order came to find that the learned trial court did not provide sufficient and reasonable opportunity to the prosecution for the examination of its witnesses, therefore, the order of closure of the prosecution evidence and the order of rejecting the petition under Section 540 Cr. P.C are liable to be set-aside accordingly made reference inhand.

3. Nemo present despite direction of the reference court.

4. I have perused the file and from the perusal of the file it is manifest that the learned trial court has not conducted case in a proper and fair manner by giving sufficient at least reasonable opportunity to the prosecution to examine its witnesses before the court nor even bothered to issue summons to the Investigating officer and the complainant in the case who are government employees and most material witnesses in the case for causing their appearance in the case for recording their evidence. The trial court appears to have acted in sketchy and perfunctory manner which has resulted into the frustration of the proceedings and in turn into miscarriage of justice. It has came to record the order of closure of the prosecution evidence by not affording sufficient and reasonable opportunity to the prosecution to examine its witnesses. The trial court has also not considered the petition of the prosecution in terms of Sec 540 Cr. P.C in its right perspective in not recording a finding as to whether or not the witnesses sought to be examined under Section 540 Cr. P.C are the material witnesses in the case which may help the court to arrive to the just decision of the case. From the bare perusal of the case, it is manifestthat the complainanat who is office of the Forest Department is the complainant in the case who is alleged to have been prevented to discharge his official duty by the accused by inflicting injuries on his person with lathis. It is he who has brought both the police and the court in motion, thus a most material witness in the case. The Investigating officer in the case is also a material witness to make deposition about the facts and circumstances of

the case. The learned Magistrate by rejecting the application of summoning these witnesses under Section 540 Cr. P.C has committed an illegality, impropriety, the order on the face of it is illegal cannot be sustained. Both the impugned orders are not sketchy alone but perfunctory as well and it demonstrates the judicial immaturity of the trial Magistrate. Their lordships of the Apex court of the country in case as Shailendera Kuamr v. State of Bihar and Ors., reported in AIR 2002 Sc 270 while discussing the scope of Section 311 which is para-materia with Section 540 of State Cr.P.C have observed as under:-

'10. Learned counsel for the respondent accused however, submitted that in this case there is no question of referrring to Section 311 Cr.P.C in view of earlier order dated 1.2.2000 passed by the HighCourt setting aside the order dated 20.9.1995 passed by the Additional Sessions Judge recalling the order dated 3.9.1994 by which the prosecution evidence was declared to have been closed. This submission is without any substance. Section 311 empowers the court to summons material witnesses though not summoned as witness and to examine or recall and re-examine if their evidence appears to it to be essential to the just evidence appears to it to be essential to the just decision of the case. It reads thus:-

'311 Power to summon material witness, or examine person present-Any court may, at any stage of any inquiry, trial or other proceeding under this code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case'. 11 bare reading of the aforesaid section reveals that it is of very wide amplitude and if there is any negligence, latches or mistakes by not examining material witnesses, the courts function to render just decision by examining such witnesses at any state is not, in any way impaired. This court in RajendraPrasad v. Narcotic Cell (1999) 6 SCC 110 observed. 'After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performedbetter'.

5. In view of the aforesaid discussion and law laid down by the Apex court of the country, the impugned orer of closure of evidence of prosecution evidence and rejection of application under Section 540 Cr.P.C is not sustainable. Before parting with the file, I would like to record here that the learned Magistrate has again acted in most improper manner and unbecoming of a judicial officer by issuing bailable warrant of arrest in the sum of Rs. 2000/- in the name of medical witness Dr. Sahanaz when there was nothing to indicate that she had wilfuly disobeyed the summons issued in her name. This act on the part of the learned trial court is depricated.

6. The reference order recorded by the learned sessions Judge, is a well reasoned order. In view of the afore discussion the reference is accepted and the impugned orders of closure of evidence recorded by the trial court on 30.01.2001 and rejeting of petition under Section 540 Cr.P.C on 24.04.2001 by the trial court are set aside. Let copy ofthis order be sent to the learnedSessions Judge, Poonch for information. The record of the case bereturned to the trial court alongwithanother copy of this order with adirection to proceed with the casein accordance with law after issuing notice to the parties. This reference is accordingly disposed of.