(2024) 04 KL CK 0046

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No.874 Of 2023

Shyju		APPELLANT
	Vs	
State Of Kerala		RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 173, 207, 220, 226, 230, 231, 311
- Indian Penal Code, 1860 - Section 34, 120B, 308, 326A

Hon'ble Judges: Bechu Kurian Thomas, J.

Bench: Single Bench

Advocate: V.John Sebastian Ralph, Vishnu Chandran, Ralph Reti John, Appu Babu, Shifna Muhammed Shukkur, Giridhar Krishna Kumar, Vishnumaya M.B., Geethu T.A., Apoorva Ramkumar, T.R.Renjith

Final Decision: Dismissed

Judgement

Bechu Kurian Thomas, J.

1. Can a document that was not procured during investigation and produced along with the final report, be introduced, after the evidence is over by recourse to section 311 of the Code of Criminal Procedure 1973?

2. Petitioner is facing an indictment for the offences under Sections 308, 326A and 120B read with Section 34 of the Indian Penal Code, 1860. He is alleged to have attacked the victim with acid. The victim who suffered the attack became blind. After the evidence in the case was completed and when the case was posted for hearing, a petition was filed by the Public Prosecutor seeking to re-open the evidence to produce a disability certificate and to examine the doctor who issued the certificate stating that the victim has become 100% blind. By the impugned order dated 23.01.2023, the Additional

Sessions Judge, Muvattupuzha allowed the said application.

3. I have heard Sri. John Sebastian Ralph, the learned counsel for the petitioner as well as Sri.T.R Renjith, the learned Public Prosecutor.

4. The learned counsel for the petitioner contended that the production of evidence that came into existence after filing the final report is not permissible. The document that is sought to be produced is dated two years after the final report was filed, and such a document cannot be produced, that too, at the fag end of a trial. It was further contended that in a criminal trial, the prosecution ought to produce all the documents which they rely upon under section 173 Cr.P.C and copies of those documents are required to be supplied under section 207 Cr.P.C and further that under section 220 Cr.P.C, he must open his case by describing the charge and the evidence that the prosecution proposes to prove. According to the learned counsel, even the defence strategy is based upon the materials produced by the prosecution, and his right to fair trial will be prejudiced if such documents are permitted to be produced after evidence is completed.

5. Sri. T.R Renjith, the learned Public Prosecutor, on the other hand, contended that the court's power to permit any evidence to come on record is determined by its essentiality, and therefore, the court's power to permit such recall of witnesses or reopening of evidence cannot be restricted.

6. I have considered the rival contentions.

7. Chapter XVIII of Cr.P.C deals with trial before a court of sessions. Section 226 Cr.P.C states that the Prosecutor shall open the case by describing the charge brought against the accused and must also state by what evidence he proposes to prove the guilt of the accused. If the accused refuses to plead guilty, the court may, on the application of the prosecution, issue a process for compelling the attendance of any witness or the production of any document or other thing as per section 230 Cr.P.C. Under section 231 Cr.P.C, on the date fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. The provisions of sections 230 and 231 Cr.P.C referred to above, do not indicate that the issue of process for compelling the production of any document or other thing is confined to any document produced along with the final report. Similarly, the evidence to be adduced on behalf of the prosecution need not necessarily be confined to those produced along with the final report.

8. The terminology used in sections 230 and 231 of Cr.P.C indicates that the prosecution is entitled to produce any document supporting the prosecution evidence. Though generally the documents and evidence are those that are collected during investigation, the prosecution cannot be tied down to only those documents produced

along with the final report. If an important document or a witness has been omitted or was not produced, for whatever reason it may be, the prosecution cannot be denied an opportunity to bring it on record as a piece of evidence in the trial.

9. In the decision in Central Bureau of Investigation v. R.S. Pai and Another, [(2002) 5 SCC 82], the Supreme Court had observed that, normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge sheet. The Court also held that, however, there is no specific prohibition that documents cannot be produced subsequently and that, if some mistake is committed in not producing the relevant documents at the time of submitting the charge sheet, it is always open to the Investigating Officer to produce it with the permission of the court. It was also observed that if further investigation is not precluded under section 173 Cr.P.C, there is no question of not permitting production of additional documents which were gathered prior to or subsequent to the investigation.

10. Similarly, in the decision in Rajendra Prasad v. Narcotic Cell [(1999) 6 SCC 110], while dealing with the question on what is the lacuna in a prosecution case, the Supreme Court observed that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified since the function of a criminal court is administration of criminal justice and not to find errors found by the parties or to find out and declare who among the parties performed better. Yet again, in P. Chhaganlal Daga v. M. Sanjay Shaw [(2003) 11 SCC 486], the Supreme Court held that even after the arguments were heard and the case was posted for judgment, the complainant can move the trial court for the reception of additional material in exercise of the powers under section 311 Cr.P.C. The power under section 311 Cr.P.C is of the widest range as held by the Supreme Court in Mohanlal Shamji Soni v. Union of India and Another [(1991) Supp. 1 SCC 271.

11. With the above principles in mind, when the circumstances arising in the instant case are considered, it is evident that the prosecution alleges that due to the act of the accused, the victim became blind, and the accused is being prosecuted for the offence under Section 326A of IPC. The certificate of the Medical Board indicating 100% blindness of the victim was obtained only in 2016 and this document was not known to the Investigating Officer or to the Public Prosecutor. It was only after the trial was completed that the victim handed over such a document to the Public Prosecutor. The nature of the crime alleged, and the nature of the certificate sought to be produced by the prosecution indicate that the same is essential for a just decision in the case. In this context, it is necessary to refer to a recent judgment in V.N.Patil v. K.Niranjan Kumar and Others [(2021) 3 SCC 661 wherein the Supreme Court had observed that the Trial Court can exercise suo motu powers in summoning witnesses whose statements ought to be recorded to subserve the cause of justice with the object of getting evidence in

aid of a just decision and to uphold the truth.

12. The scope and purport of section 311 of Cr.P.C are quite often misunderstood. It is a provision enacted for the purpose of aiding the ultimate object of a criminal trial, that is, to render justice to the parties. There is no embargo or restriction in summoning any person as a witness, even those witnesses whose statements have not been recorded earlier, or to accept any material. The only restriction is that the material or the evidence sought to be adduced must be essential for a just decision in the case. The contention that the document was not seized earlier or that it was not part of the final report, is not a relevant consideration in a proceeding of this nature.

13. Since the learned Session Judge has found that the evidence sought to be introduced in the form of a document and to examine the doctor who issued the certificate is essential for a just decision of the case, I find no perversity in the impugned order.

Accordingly, this Criminal Miscellaneous Case is dismissed.