

(2010) 01 RAJ CK 0095
Rajasthan High Court (Jaipur Bench)
Case No: None

Mahesh Chand Khandelwal

APPELLANT

Vs

Surendra Kumar Dad

RESPONDENT

Date of Decision: Jan. 20, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 242(3), 311, 313, 482
- Evidence Act, 1872 - Section 165

Citation: (2010) 3 RLW 2498

Hon'ble Judges: Mahesh Bhagwati, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Bhagwati, J.

By way of this petition filed u/s 482 of Cr.P.C, the petitioner has prayed to set aside the order dated 20th August, 2009 rendered by the Additional Chief Judicial Magistrate No. 7, Jaipur City, Jaipur in Criminal Case No. 4136/2008 whereby he prayed to grant permission to cross-examine the complainant.

2. Heard learned Counsel for the petitioner and carefully scanned the impugned order dated 20th August, 2009.

3. Having perused the impugned order, it is noticed that the complainant filed an affidavit before the learned trial Court and the case was fixed for recording the cross examination on 21st February, 2009. The learned Counsel for the petitioner did not avail the opportunity of cross-examination and on his request the case was adjourned to 23rd March, 2009 and thereafter on 30th April, 2009 it was submitted by the learned Counsel for the petitioner before the learned trial Court that both the parties are endeavouring to compound the case but finally the parties came out with the submission that the compromise between them was not possible.

The learned trial Court thereafter fixed the case for recording the statements of the accused u/s 313 of Cr.P.C. At that stage, the accused filed an application u/s 311 of Cr.P.C. praying that the complainant may be summoned for cross examination. The said application was dismissed by the learned trial Court. Aggrieved with the order, the petitioner filed a revision petition in the Court of Sessions which was also dismissed. Aggrieved with the order of Additional Sessions Judge, he has filed this petition u/s 482 of Cr.P.C. invoking the inherent powers of High Court.

4. A bare perusal of Section 311 of Cr.P.C. makes it clear that the powers u/s 311 of Cr.P.C. have been given to the Court to examine, or re-examine any person as a witness, if that court considers it necessary to do so for the just decision of the case. If the Section 311 of Cr.P.C. is read with Section 165 of Indian Evidence Act, it would be clear that the power u/s 311 of Cr.P.C. and Section 165 of Indian Evidence Act are conferred on the Court and not on the parties and therefore, it is the Court alone which can exercise the powers u/s 311 of Cr.P.C, if the Court is of the opinion that it is necessary to do so for the just decision of the case. The examination and re-examination which is contemplated by Section 311 of Cr.P.C. and Section 165 of Indian Evidence Act is to be made by the Court and not by the parties. Viewed in this light, if the powers u/s 311 of Cr.P.C. are used by the Court for the purpose of enabling any party to examine or re-examine the witness, it would be impermissible to do so. Of Course, the Court has unfettered powers to examine and re-examine any witness u/s 311 of Cr.P.C. at any time.

5. A bare reading of Sub-section 3 of Section 242 of the Cr.P.C. shows that the Magistrate conducting trial is empowered to defer the cross examination of any prosecution witness or witnesses who have been examined or recall any witness for further cross examination. The powers given by sub Section 3 of Section 242 of Cr.P.C. are judicial powers and must be exercised in a judicial manner. Besides, the provisions contained in Sub-section 3 of Section 242 of Cr.P.C. are in the nature of special provisions, therefore, the general provisions contained in Section 311 of Cr.P.C. cannot be invoked by the accused for recalling any witness for cross examination.

6. Learned Counsel for the petitioner has canvassed that if the complainant is not put to cross examine, it shall cause a great injustice to the accused, as the accused was suffering from malignancy and he could not come in the Court. It is a well settled proposition of law that the powers u/s 482 of Cr.P.C. must be exercised sparingly with circumspection and in the rarest of rare cases. Exercise of inherent power u/s 482 of Cr.P.C. is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be done if the inherent power is not exercised. The power u/s 482 of Cr.P.C. is to be exercised to prevent abuse of the process of any Court. It is not a provision permitting any person to abuse the process of law. The petitioner was given ample opportunity to cross examine the complainant but he, for one or the

other reason, did not avail the same. That shows his seriousness to the trial. The petition is totally devoid of any substance and the same deserves to be dismissed.

7. In the result, the misc. petition being bereft of merits, stands dismissed.