

(1991) 04 AHC CK 0128

Allahabad High Court

Case No: Criminal Misc. Application No. 4495 of 1991

Bal Krishna

APPELLANT

Vs

District and Sessions Judge and
Another

RESPONDENT

Date of Decision: April 4, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 482, 540

Citation: (1991) 15 ACR 318

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: Rajiv Chaturvedi, for the Appellant;

Final Decision: Dismissed

Judgement

N.L. Ganguly, J.

The application by accused-applicant u/s 482 Code of Criminal Procedure for quashing the order dated 19-3-91 passed in S.T. No. 110 of 1990 State v. Bal Kishan by the Sessions Judge, Jalaun at Orai has been filed. The impugned order has been passed by the learned Sessions Judge on the objection of the accused-applicant that no more time be granted to the prosecution for examining the prosecution witnesses. The accused-applicant is at present confined in Jail for last one year. The prosecution case is going on and on the last two dates, the prosecution could not examine two witnesses in Sessions Trials. No doubt earlier opportunities were given but the prosecution failed to produce the said witnesses. On the last occasion, two witnesses were to be examined by the prosecution and only one witness was produced and other witness was not summoned or produced before the Court. The learned Judge observed that only one witness was examined and it shall be deemed that prosecution is not interested in producing the remaining witnesses. It shall be deemed that the prosecution evidence is closed. On the next occasion also, the prosecution witness was not produced before the Court. It was observed in the

order of learned Sessions Judge that:

...inspite of giving another date for recording statement of the accused, parties were told by passing express order that if any witness who remains present before recording statement of accused may be examined. The Court felt short of time due to doing other cases on 25-2-1991 and the case was listed for evidence on 5-3-1991. It was the same notion as. It was apparent from my order dated 14-2-1991 under which last steps for procuring presence of witnesses was also ordered to be adopted. Statement u/s 313 Code of Criminal Procedure has still not been recorded. Both the witnesses are in attendance.

2. The learned Counsel urged that use of word that the prosecution evidence shall deem to have been closed means that the prosecution evidence had already been closed and the order dated 25-1-91 cannot permit the Sessions Judge to allow prosecution to examine the other witnesses of prosecution the Sessions Trials. I am afraid this submission is not correct. The learned Sessions Judge in his order categorically stated that in his order he had made it clear that further time shall not be granted and if the date of recording the statement of the accused persons, the witnesses are in attendance, their statement shall be recorded. In my opinion, the learned Sessions Judge had observed earlier that prosecution evidence shall be taken to be closed in the earlier stages of the proceedings was merely a caution given by the learned Judge to the prosecution agency so that they may produce the evidence on the next date that was not really an order of closing the prosecution evidence. After examining the entire order of the learned Judge, I am of the view that there was no error in passing of the order that the prosecution witnesses be permitted to be examined before recording the statement of accused persons u/s 313 Code of Criminal Procedure. The learned Counsel for the applicant cited one [Siva Anjaiah Vs. State of Andhra Pradesh](#). The argument is that in the said case the learned Court observed as under:

The learned Magistrate having forfeited the right of the prosecution to examine further witnesses and posted the case for the examination of the accused, acted illegally and without jurisdiction in setting aside that order. The order made by the Magistrate could have been set aside only in appeal or revision as the case may be. If he thought it necessary to examine further witnesses he could have exercised his powers u/s 540 Code of Criminal Procedure but he had no jurisdiction to set aside the order upon a petition by the State. The order dated 7-7-1990 is, therefore, set aside.

3. The case law cited by the learned Counsel is not applicable to the present case. Admittedly, in the present case, there was no specific order of closing the prosecution evidence. As already observed it was a caution given to the prosecution by the Court that all the witnesses be produced otherwise the inference may be drawn against the prosecution. Further on the last occasion, the court specifically referred fixing date for examination of the accused person u/s 313 Code of Criminal

Procedure. It was made clear if witnesses are in attendance before recording of the statement of accused, their statements shall be recorded. It is abundantly clear that the prosecution evidence had not been closed and the learned Judge was conscious to decide the case at an early date on the ground that the accused was confined in jail, I find no error of procedure adopted by the learned Sessions Judge.

4. The learned Counsel urged that the accused-applicant is in jail. In the interest of justice, the Sessions Trial may be concluded at a very early date. If the prosecution is given time again and again for examining the remaining prosecution witnesses, the accused shall suffer irreparably. After hearing this argument, I consider it necessary to issue a direction that the learned Session Judge shall proceed with the trial and permit the prosecution only once giving a date for examining the remaining prosecution witnesses before recording the statement of accused person u/s 313 Code of Criminal Procedure. He shall do it at a very early date. This observation is made subject to any such circumstances as strike, death etc, which is beyond the control of the human agency. I am informed that 8th April 1991 is the date fixed for recording of the statement of the witnesses and statements of accused persons u/s 313 Code of Criminal Procedure. I hope and trust that the learned Sessions Judge will not further grant any more indulgence for examining the prosecution evidence by grant of adjournment. It is expected that the Sessions Trial will be concluded and decided within a period of six weeks from the date of service of certified copy of this order.

5. With these observations, the application is dismissed.

6. Let a copy of this order be given to the learned Counsel today on payment of usual charges.