

(1990) 09 MP CK 0019

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Cri. C. No. 1479 of 1990

Dinesh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Sept. 25, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311

Citation: (1991) 36 MPLJ 431 : (1991) MPLJ 431

Hon'ble Judges: V.D. Gyani, J

Bench: Single Bench

Advocate: Jaisingh, for the Appellant; Girish Desai, Panel Lawyer, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.D. Gyani, J.

Although it was a petition u/s 397, Criminal Procedure Code, as initially filed, but at a later stage it was permitted to be converted into a petition u/s 482, Criminal Procedure Code, possibly with a view to make the scope of interference wider.

By this petition the petitioner seeks to challenge the order dated 3-8-1990, passed by the 2nd Addl. Sessions Judge, Dewas, in S.T. No. 29 of 1988, thereby disallowing petitioner's application for recalling of two witnesses for the purpose of cross-examination.

Learned counsel appearing for the petitioner urged that the trial has been pending for over three years and the prosecution failed to produce witnesses on dates fixed and adjournments were granted to the State for production of witnesses, while the accused was refused an opportunity. Certified copies of the application and order-sheet dated 9-4-1990, as referred to in the impugned order, have now been produced by the learned counsel in support of his argument. Ramchandra and

Suresh s/o Premnarayan, P.Ws. 9 and 10, respectively, were sought to be recalled on the ground that certain important questions were omitted to be put to these witnesses. This application was made while the Investigating Officer was still in the witness-box.

Going through the order dated 9-5-1990, the reason for rejection as assigned by the trial Court is that of effective cross-examination, as had already been done by a senior counsel on behalf of the accused and no justifiable ground was made out for recalling the witnesses. This application was again repeated, but the successor-in-office rejected the application in view of the earlier order dated 9-4-1990, passed by his predecessor.

Learned counsel for the petitioner submitted that what was being challenged before the trial Court was character of being an eye-witness, as claimed by witness Ramchandra and witness Suresh s/o Premnarayan (P.Ws. 9 and 10 respectively). While assailing their testimony a suggestion had in fact been thrown to witness Suresh that he was not present on the spot. Learned counsel states that after recording of their statements, some positive evidence as regards their presence at a different place at the time of the occurrence has come by, which the accused, could not have divulged at the stage of making an application as it would have posted the opposite party with prior knowledge and prejudiced the accused in the sense that having come to know as to what was being sought to be asked, the witnesses would not have stated the truth.

It was this constraint, which weighed and worked with the counsel, who made an application for recalling the above witnesses and it was for this reason that the application was dismissed as it failed to disclose any justifiable ground for recalling of witnesses named above.

Section 311, Criminal Procedure Code, is in two parts, the former Part thereof confers a discretion on the trial Court to recall a witness, while the latter part is mandatory in nature. It is obligatory on the Court to recall a witness for cross-examination if the evidence or further evidence of such a witness is essential for a just decision of the case. It depends on facts of each case and no hard and fast rule as such can be laid down. All that has been said so far by a catena of cases is that the discretion has to be exercised keeping in view the facts of each case and the paramount consideration is arriving at a just decision of the case. The earlier application was rejected by the learned trial Judge on 9-4-1990 on the ground that a senior counsel had already cross-examined the witnesses.

Going through the copy of the application filed by the accused, one would find that a clear statement about some valuable information received by the accused was made in the said application and it was in that context that a few important questions could not be put to these witnesses.

As noted above, the constraint and at times even by way of strategy plain facts as one would expect them to be put are not placed by the counsel for apprehensions entertained by him. Howsoever desirable it is, yet it cannot be overlooked that divulging of fact beforehand to a prosecution witness and yet expecting him to come out with a truthful answer would be nothing short of running a risk and possibly it was with this view that an elaborate statement of facts actually putting the purpose of further cross-examination was not made or indicated in the application.

The crucial question that arises for consideration is not an omission on the part of the counsel, either to make a categorical clear statement or putting a particular question in cross-examination of a witness, whether now as things stand, it is essential for a just decision of the case?

In a criminal trial, as between the actual incident and the Court, if there is someone, it is the eye-witness who presents the whole incident before the Court. The challenge is to the very character of being an eye-witness claimed by Ramchandra and Suresh s/o Premnarayan. It was desirable, that these facts should have been placed before the trial Court, as plainly as they are now put before this Court. But even this omission on the part of the counsel, should it be allowed to come in the way of having a just decision of the case. As stated by the learned counsel, the trial continued for over three years and numerous adjournments have been granted to the prosecution. Recalling of witnesses by itself would not have added to any substantial delay. The case, as stated by the learned counsel, has now been fixed for recording of statements of accused. Shri .Taisingh read out from certified copies of statements of those witnesses. Had the record of the trial Court been called, it would have possibly further delayed the matter, although at one stage it was felt desirable to have the same before this Court.

No stage during a criminal trial earlier than the actual pronouncement of a judgment is late in invoking and exercising the powers u/s 311, Criminal Procedure Code. The very opening words of the Section 311 itself indicate "at any stage of the trial".

For the foregoing reasons this petition deserves to be allowed and is accordingly allowed. The impugned order is quashed and the trial Court is directed to summon the above-named witnesses for further cross-examination at an early date, as may be convenient and suitable to all parties concerned. The prosecution shall also see to it that the witnesses are produced before the Court so as to avoid any further delay in the trial.