

(2012) 04 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Criminal T.A. No. 22 of 2011

Abdul Hamid Zargar and others

APPELLANT

Vs

State of Jammu & Kashmir and another

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Arms Act, 1959 — Section 25, 3
Explosive Substances Act, 1908 — Section 4, 5
Ranbir Penal Code, 1989 — Section 34, 419

Citation : (2012) 04 J&K CK 0010

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : M.A. Qayoom, for the Appellant; N.H. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Yaqoob Mir, Judge

1. Petitioners and respondent No. 2 are facing trial before the Court of Additional Sessions Judge, Kathua for commission of offence punishable

u/s 3/25 Arms Act, 4/5 Explosive Substances Act, 419/34 RPC. Petitioners seek transfer of the case to any other Court of competent jurisdiction

at Srinagar. The first grievance projected is that the right of speedy trial is impeded. In seven years time only seven witnesses have been produced

and examined, despite such tardy pace in producing the witnesses, the trial court has not closed the prosecution evidence.

2. Ground as projected does not constitute a ground for transfer of the case. It in fact is a matter of concern that trial court has not implemented its

own orders nor the prosecution has been pulled up for their slackness in producing the witnesses resultantly trial has been protracted.

3. The charge against the accused has been framed on 21.5.2005. From 21.5.2005 till 24.5.2011 out of 20 listed witnesses only seven witnesses

have been produced i.e. listed witness No. 2, 3, 5 and 6 have been produced in the year 2006, witness No. 7 in the year 2007, witness No. 1 in

the year 2010 and finally listed witness No. 4 on 23.3.2011.

4. Interim orders recorded from time to time by the trial court would indicate that various schedules have been fixed for production of the

witnesses but of no use. It appears that if orders have been recorded and schedules have been fixed for production of the witnesses simply in the

name of fixing schedules, no seriousness has been exhibited in pulling up the prosecution for its slackness in producing the witnesses. As a tip of

iceberg, it shall be relevant to quote order recorded by the trial court on 5.4.2011 wherein it is provided that on 20.5.2011, 21.5.2011, 23.5.2011

and 24.5.2011 prosecution witnesses shall be produced. When the case has been taken up on 20.5.2011 no witness has been produced nor any

cause of non production has been shown. Similar is the position recorded on 21.5.2011, 23.5.2011 and 24.5.2011 except trial court on

24.5.2011 has recorded that last opportunity is granted to APP for production of the witnesses and for production of the witnesses schedule has

been fixed from 6.7.2011 to 9.7.2011.

5. Opportunities have been granted with impunity, right to speedy trial has become casualty. Production of seven witnesses in seven years time is

quite disgusting. Fair and expeditious trial has to be ensured, any further slackness on the part of prosecution in producing witnesses shall be

seriously dealt with.

6. Next ground projected is that it shall be convenient for the prosecution as well as accused to appear before any Court of competent jurisdiction

at Srinagar/Kulgam/Anantnag.

7. On the ground of convenience learned counsel has relied on the judgment reported in Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of

Punjab and Others, wherein, at para 17, it has been held that indisputedly the convenience of the parties including the witnesses to be produced at

the trial is a relevant consideration for transfer of a criminal case. While applying the same to the facts of the present case, contention has to be

rejected as some listed witnesses who are yet to be examined are residents of

Delhi and some are posted in Police Station, Lakhanpur.

Furthermore, accused Mohammad Amin Wani is being produced under custody from Delhi, it shall be absolutely inconvenient for the witnesses if

the case is transferred to Srinagar. Same shall be true about the production of accused Mohammad Amin Wani because it shall be convenient for

the authorities to produce him at Kathua, so on the ground of convenience no case is made out.

8. Petitioners (accused) no doubt are at large, two of them i.e. petitioner No. 1 and 2, are residents of Wanpoh Panzeth Qazigund and one i.e.

petitioner No. 3 is resident of Kishtawar, but for their convenience the authorities who are to produce respondent No. 2 (Mohammad Amin Wani)

cannot be subjected to inconvenience, furthermore, petitioners have an option i.e. on occasions when their appearance shall be dispensable, they

can seek exemption through their engaged Advocate and such exemption dependent upon the circumstances has to be granted by the trial court.

9. Lastly learned counsel projected that the petitioners (accused) are not being treated properly but same position is not supported by the records.

Perusal of the interim orders would suggest that at times they have been exempted from personal appearance. There is no question of they having

been subjected to any hostility.

10. Learned trial court had granted last opportunity to the prosecution for production of the witnesses as reflected in interim order recorded on

24.5.2011 but thereafter trial court record has been summoned so case has remained as it is. Now trial court is expected to fix the schedule for

production of witnesses and repeat the order dated 24.5.2011 so as to ensure expeditious trial in-keeping with the right of the accused to speedy

trial.

11. Petitioners shall appear before the trial court on 12.05.2012 and in case of any difficulty, they shall be at liberty to seek exemption from

personal appearance through their engaged counsel and the trial court shall grant such exemption dependent upon requirement of their personal

appearance.

12. No ground is made out for transfer of the case, petition accordingly dismissed. Trial court record along with copy of the order be send back

forthwith.