
(2005) 01 JH CK 0034

In the Jharkhand High Court

Case No : Criminal M.P. No. 1392 of 2004

Anand Swaroop Gupta and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243, 247, 311, 313, 91

Citation : (2005) CriLJ 2306 : (2005) 4 JLJR 318 : (2005) 3 JCR 467 : (2005) 2 EastCric 212 : (2005) 1 BLJR 657

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Ram Balak Mahto and Pandey Neeraj Rai, for the Appellant; S.N. Rajgarhia, Assistant Public Prosecutor, Public Prosecutor N. Roy and Mahesh Kumar Sinha for Opposite party No. 2, for the Respondent

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This Criminal Misc. Petition has been preferred by the petitioners, named above, against the orders dated 29th November, 2004, 30th November, 2004 and 1st December, 2004 passed by the learned Judicial Magistrate, Ranchi, in Complaint Case No. 46 of 1999. By order dated 29th November, 2004, the learned Magistrate, while rejected the objection, raised by the petitioners regarding admissibility of a document, filed by the complainant at the stage of defence, also rejected the time petition, filed by the accused-petitioners to grant one day's time to examine one of the defence witnesses and closed the defence evidence. Further by order dated 30th November, 2004, the learned Magistrate has rejected the petition, filed by the accused-petitioners u/s 311 of the Code of Criminal Procedure and thereafter, by order dated 1st December, 2004 the learned Magistrate while rejected the prayer of the accused-petitioners for passing necessary order at that stage as to whether the document in question will be considered as evidence and in the alternative summoning the original document and maker of the said entry, allowed the accused-petitioners a

fortnight time to challenge the order dated 29th November, 2004 and 30th November, 2004 before the High Court.

2. Opposite party No. 2 has appeared and opposed the prayer. According to him, the petitioners want to delay the proceeding as they have earlier lost at various stages up to the Supreme Court. Only with a view to linger the proceeding, one or other application is being preferred by the accused-petitioners to defeat the purpose.

3. Counsel for the petitioners submitted that 27th November, 2004 was the date fixed for examination of one of the defence witnesses, namely Sri Naresh Kumar Gupta, which is most vital in the present case. The case could not be taken up on the said date as the learned Judicial Magistrate was absent. 29th November, 2004 was the next date fixed. On the said date, though the defence witness Sri Naresh Kumar Gupta was present, he could not be examined, the lawyer of the accused being absent from the Court on the said date it was submitted that though prayer for one day's adjournment was made on 29th November, 2004, for the purposes of examining the defence witness Sri Naresh Kumar Gupta, it was not allowed.

4. It appears that on 30th November, 2004 the petition filed by the accused-petitioners u/s 311 of the Code of Criminal Procedure, with a prayer to examine Sri Naresh Kumar Gupta, a defence witness, was taken up and rejected. Learned counsel for the petitioners submitted that though the defence witness Sri Naresh Gupta was present on the said date in the Court and an affidavit was also filed by Sri Naresh Kumar Gupta, mentioning therein, that certain documents were relevant and necessary for the ends of justice, the learned Court below did not choose to exercise its power u/s 311 of the Code of Criminal Procedure.

5. It appears that by the impugned order dated 1st December, 2004 the learned Magistrate declined to pass order regarding admissibility of the document, already allowed in evidence on behalf of the complainant which was marked as Ext. 12. It was submitted that the petitioners were not given proper opportunity to place relevant evidence about the said document, produced for the first time.

6. Admittedly, the present Misc. Case appears to be unnecessarily being dragged for more than five and half years. The accused-petitioners and the complainant-opposite party No. 2 are related to each other petitioner No. 1 is the father of opposite part No. 2 whereas the other two petitioners i.e. petitioner Nos. 2 and 3 are full brothers of opposite party No. 2. From the copy of the summon dated 22nd November, 2004, as produced by the learned counsel for the petitioners it appears that the defence witness Sri Naresh Kumar Gupta is also son of petitioner No. 1 and is brother of opposite party No. 2. It is informed at the bar that the parties are in litigating terms and a number of cases are pending in between them at Civil Court, Ranchi.

7. To find out the fact whether the petitioners were unnecessarily dragging the case to linger the proceeding or there was genuine failure on their part to

produce defence witness Sri Naresh Kumar Gupta, I have gone through the enclosures, filed with the petitioners, the enclosures, attached with the counter affidavit, file by the opposite party No. 2, and the certified copy of the order-sheets of Complaint Case No. 46 of 1999, as was filed by the counsel for the opposite party No. 2. The following facts have come to my notice :

(i) The petitioners moved before this Court vide W.P. (Cr.) No. 169 of 2001 against the order, taking cognizance as also for quashing the entire criminal proceedings, wherein no substantive relief was granted by the Court. However, the Court wanted to ensure amicable settlement in between the parties with regard to all the disputes, but it failed.

(ii) Cr. Misc. No. 11 of 2003 was filed by the opposite party No. 2 before the learned Judicial Commissioner, Ranchi, for transfer of the case, which was disallowed and direction was given to expedite and conclude the trial by August 2003 positively.

(iii) In W.P. (Cr.) No. 19 of 2003, preferred by opposite party No. 2 Pawan Kumar Gupta, a Bench of this Court vide its order dated 19th June, 2003 directed the trial Court to dispose of the case without further delay fixing the case on day-to-day basis, (iv) Special Leave to Appeal (Crl.) No. 6008 of 2004, preferred by the petitioners, was also dismissed by the Supreme Court on 20th February, 2004.

(v) Thereafter, Cr M.P. No. 602 of 2003 was preferred by the petitioners against part of the order dated 8th July, 2004, whereby and whereunder, two applications, preferred by the petitioners on 1st July, 2004 u/s 247 read with Section 243 and 91 of the Code of Criminal Procedure for issuance of summons, was dismissed by this Court on 27th August, 2004.

(vi) Another application being Cr. M.P. No. 825 of 2004 was preferred by the petitioners before this Court against an order dated 1st July, 2004, whereby and whereunder, the petition filed on behalf of the three petitioners, subsequent to their examination u/s 313 of the Code of Criminal Procedure to allow them to answer the questions, put to them was allowed by this Court on 27th August, 2004. The trial Court was directed to fix a date for further reply to the accused-petitioners to the question, put to them, with a direction to the trial Court to ensure disposal of the case at an early date.

(vii) It appears that the case was lingered even thereafter as opposite party No. 2 moved this Court vide Cr.M. No. P. 1146 of 2004, wherein, while this Court did not choose to pass any specific order, by its order dated 10th November, 2004 observed that if unnecessary adjournments are taken by one or other party and the Court does not dispose of the case at an early date, it will open to the petitioner (opposite party No. 2 herein) to bring the fact to the notice of the Court at its administrative side.

8. From the certified copy of the order-sheet it appears that on 22nd November, 2004 DW 2, P.K. Narsaria, was cross-examined and discharged. Although

summon was issued to the defence witness Sri Naresh Kumar Gupta, son of petitioner No. 1, on 22nd November, 2004, his counsel did not receive the same on the said date, counsel for the accused-petitioners Sri Ajit Nath Singh received the summon, issued to the defence witness Sri Naresh Kumar Gupta, on 25th November, 2004, wherein, 27th November, 2004 was the date shown for his evidence. In the meantime, the case was also taken up on 24th November and 25th November, 2004. The accused-petitioners appeared on 27th November, 2004 and also filed attendance of one of the defence witnesses but in absence of the Court, the case was adjourned for 29th November, 2004. On 29th November, 2004 when the case was taken up, a time petition was filed on behalf of the accused-petitioners with a statement that the witness Sri Naresh Kumar Gupta and his conducting lawyer Sri P.N. Rai, Advocate, were out of Station and, therefore the case be adjourned. Mr. Ajit Nath Singh, learned counsel for the petitioners, was present, who pressed the time petition but the learned Court below having noticed the facts and circumstances and that the case is an old one and different orders have been passed by this Court from time to time to dispose of the case expeditiously and the plea that another lawyer was out of Station was not tenable as Sri Ajit Nath Singh, who pressed the time petition, was already present, refused to adjourn the case. As stated above, thereafter, petition, filed by the accused-petitioners u/s 311 of the Code of Criminal Procedure, was rejected on 30th November, 2004, following by the order, as was passed on 1st December, 2004.

9. In the manner in which the case is being handled casually by the petitioners, they need no sympathy. This Court was of the view not to allow the defence witness Sri Naresh Kumar Gupta to be examined or cross-examined, considering the manner in which the petitioners are dealing with the case. But taking into consideration that fact the defence witness Sri Naresh Kumar Gupta was summoned and was asked to appear on 27th of November, 2004, on which date the Court was not present and 29th November, 2004 was the next date fixed, but for the reasons, mentioned above, the said defence witness Sri Naresh Kumar Gupta could not appear and his lawyer also could not appear because of marriage of his niece, by way of last indulgence, I give another opportunity to the petitioners. The case is being remitted to the Court below with a direction to give one more indulgence to the accused-petitioners to produce their defence witness Sri Naresh Kumar Gupta. If the defence witness Sri Naresh Kumar Gupta appears with his lawyer on the date, as may be fixed by the Court below, taking into consideration the present order, he shall be allowed to be examined and cross-examined. However, on failure, the Court will not adjourn the case and will proceed further. In any case, no further opportunity will be required to be given to the accused-petitioners for production of their defence witness Sri Naresh Kumar Gupta.

10. It is again made clear that the case shall proceed on day-to-day basis, without any adjournment and the trial Court will ensure that the trial is concluded at an early date. This Criminal Misc. Petition stands disposed of

accordingly, with the aforesaid observations and directions.