
(1990) 11 RAJ CK 0002
In the Rajasthan High Court
Case No : Cr.Misc. Petition No. 1241 of 1990

Bhagwan Singh and Others	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1990) 2 RLW 162 : (1990) 2 WLN 405

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

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—This petition u/s 482 Cr.P.C. has been filed by the petitioners who are 24 in number against the order dated 28.6.1990, passed by M.J.M. Ist Class Laxmangarh (Alwar) in case No. 55/78.

2. It is apparent from the record that all these 24 persons are facing trial for the last 12 years but unfortunately the trial could not be completed for one reason or other. After giving several opportunities, when the prosecution did not examine certain witnesses, the learned Magistrate closed evidence of the prosecution in the year 1987. Subsequently, on the application of the A.P.P. the prosecution evidence was re-opened. This order was challenged before this Court in S.B. Cr.Misc. Pet. No. 634/89. This Hon. Court was pleased to accept this petition and the order of the learned Magistrate, granting further opportunity to the prosecution to lead evidence was set-aside.

3. The State did not challenge the said order but the complainant filed SLP before the Supreme Court. The Hon'ble Supreme Court dismissed the SLP but made the following observations.

The SLP is dismissed. We would however, make it clear that in case the learned Magistrate is of the view that further evidence of the doctor is necessary, he is free to call him as a Court witness.

4. In view of the aforesaid observations made by the Hon. Supreme Court, the

learned Magistrate has directed to summon Dr. P.S. Agrawal and Dr. B.B.Khendalwal as Court Witnesses.

This order is being challenged in this petition u/s 482 Cr.P.C.

5. The contention of the learned Counsel for the petitioner is that the petitioners are facing trial for the last more than 12 years and the accusation against them is not of very serious nature. He further submits that after the closure of the prosecution evidence, there was hardly any justification to summon the doctors as court-witnesses as it would amount to fill up the lacunas. He further submits that the observations made by Hon. Supreme Court were exparte and no notice was given to the petitioners. The SLP was dismissed at the admission stage itself.

6. This Court can not sit-over the observations/orders passed by Hon. Supreme Court and it is binding on the trial court. In compliance with the order, the learned Magistrate thought it proper to summon the aforesaid two doctors. I do not think that he committed any illegality. The Court has jurisdiction to call any witness as court-witness and I do not find any ground to interfere in the said order while exercising powers u/s 482 Cr.P.C.

7. However, the grievance of the petitioners that they are facing trial for such a long period is fully justified. The learned Magistrate would see that the case is not prolonged further and he should try to record the evidence of the aforesaid two doctors as early as possible, preferably on the next date. If the doctors do not appear in spite of service, the learned Magistrate may take coercive method for securing their presence.

8. It is made clear that, keeping in view that the petitioners are facing trial for the last 12 years as such they may move an application for exemption of their personal attendance. The said application should be considered sympathetically for the reasons mentioned above, if moved.

With these observations the petition is disposed of.