

(2005) 04 JH CK 0056
In the Jharkhand High Court
Case No : Criminal MP No. 333 of 2005

Bishnu Dayal Gupta and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 22-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 137, 138
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2006) 3 BC 459 : (2005) 4 JCR 392

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : P.N. Rai, for the Appellant; S.N. Rajgharia, Public Prosecutor N. Roy and Mahesh Kumar Sinha for O.P. No. 2, for the Respondent

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure (hereinafter to be referred as "Code") has been filed for quashing the orders dated 23.2.2005 (Annexure-5), 25.2.2005 (Annexure-7), 5.3.2005 (Annexure-10), 7.3.2005 (Annexure-11), 9.3.2005 (Annexure-13) and order dated 10.3.2005 (Annexure-14) passed in C-46 of 1999.

2. Facts giving rise to filing of this application are that a complaint case No. C-46 of 1999 was filed before the learned Chief Judicial Magistrate, Ranchi by the complainant O.P. No. 2 Pawan Kumar Gupta in which he impleaded his own brothers petitioners Nos. 1 and 2 and his father petitioner No. 3 as accused alleging commission of offence under Sections 406, 420 and 120-B of the Indian Penal Code and u/s 138 of the Negotiable Instruments Act, ("N.I. Act" in short). It is stated that on a number of occasions both sides came to the High Court in certain matters and directions for speedy trial of the case were made. In this connection, Cr. M.P. No. 825 of 2004, was filed on behalf of accused persons, Cr. M.P. No. 1146 of 2004 was filed by the complainant-O.P. No. 2. Thereafter Cr. M.P. No. 1392 of 2004 was preferred by the accused persons and in all these

applications, some orders were passed by the High Court. It is further stated that on 25.1.2005 in Cr. M.P. No. 1392 of 2004, the High Court passed orders giving last chance for examining D.W. Naresh Kumar Gupta. On 31.1.2005 DW Naresh Kumar Gupta was examined-in-Chief. Defence proved a document (Ext.-E) being letter head of Chanduka Oil Mill containing undertaking of the complainant bearing his signature. It is further stated that 14 days' adjournment was given to the complainant before cross-examination of Naresh Kumar Gupta. Thereafter on 14.2.2005 despite strict order of the High Court, complainant sought further adjournment of one week for cross-examination of Naresh Kumar Gupta (defence witness), but on protest by the witness, adjournment was refused and, therefore, cross-examination was done in part which continued from 16.2.2005 to 18.2.2005 when some new facts were introduced by the prosecution as the complainant proved new documents such as another letter pad of Chanduka Oil Mill as Ext.-13, besides other documents were brought later (Ext.-14). It is further stated that line of cross-examination of Naresh Kumar Gupta adopted by the prosecution was to disapprove/controvert Ext.-E i.e., the letter head of defence containing complainant's undertaking (Annexure-1) with the help of Ext.-13 by drawing comparison between two showing difference in certain particulars of format of the letter heads including difference in the RST, CST and RTA numbers. It is further stated that after cross-examination, at Para 13, after eliciting answers admitting difference between the two letter heads (Ext.-E and Ext.-13) suggestion that Ext.-E is forged, was denied by the witness. It is further stated that by producing new facts and documents including Ext.-13 during cross-examination of Naresh Kumar Gupta, prosecution tried to take away the evidence in favour of accused and in that circumstance it became necessary for the defence to re-examine witnesses for proving documents to clarify the ambiguities and the case made out by the prosecution and such re-examination became necessary to controvert documents/evidence brought by complainant during cross-examination of this witness and to corroborate evidence adduced by the accused. It is further stated that re-examination is necessary for clearing confusion, putting the new facts in cross-examination in favourable perspective and setting obscurities and lightening evidence. It is further stated that documents were enclosed with the said re-examination petition to satisfy the Court about their importance/relevance in clarifying the facts introduced in cross-examination by Ext.-13 and those documents were enclosed as Annexures-1, 2, 3, 4 and 5, mainly letters/letter heads of Chanduka Oil Mills and some of these letters bear signatures of complainant. Further, another document being Bill No. 1293, dated 5.9.1994 of one Geeta Sales Corporation was also enclosed which had been issued in favour of Chanduka Oil Mills showing its CST number which tallies with the CST number as mentioned in the aforesaid letter heads of the Chanduka Oil Mill produced by the defence. Thus, necessary evidence was sought to be produced by the defence which, would clarify and counter the prosecution's suggestion made during cross-examination by relying upon newly introduced Ext.-13 to the effect that the earlier produced letter heads by defence vide Ext.-E is forged. It is further stated that the complainant immediately filed a

petition to defer cross-examination on the ground that documents as prayed by him be called for, by way of a separate petition, be allowed to come. Hence, the defence counsel did not press the said petition for re-examination for the present endorsing on its margin which is as follows :-

"This petition is not being pressed at present in view of the petitioner filed by complainant to defer the cross-examination of witness Naresh Kr. Gupta as prayed in petition filed today simultaneously."

It is further stated that said prayer of not pressing was made on behalf of the accused before hearing on complainant's petition to call for the documents could be done in the wake of observation by the learned Magistrate that according to him, such re-examination petition is premature and hence liable to be dismissed if pressed. After hearing, the complainant's petition for calling for the documents was disallowed and complainant was asked to continue with the cross-examination to which the complainant declined, making the Court observe regarding discharge of the witnesses. Thereafter, immediately in the wake of such development about the presence of such witnesses namely Naresh Kumar Gupta, the defence filed another petition renewing his prayer that has been made in the earlier petition (Annexure-3) for "re-examination of DW Naresh Kumar Gupta and the said petition was filed much before 4.00 PM on 23.2.2005. The learned trial Court recorded the order of closing defence evidence and discharged DW Naresh Kumar Gupta and the issue of re-examination, as prayed for by the defence, was kept alive on the next date i.e., 24.2.2005. It is clarified that till 23.2.2005 the learned Magistrate had not passed any order discharging DW Naresh Kumar Gupta who was very much present and available for re-examination. On 24.2.2005 hearing was done fixing 25.2.2005 for orders, on which date, the prayer for re-examination was refused on the ground that the defence witness wants to produce new facts and documents in re-examination cannot be allowed in view of the ruling of the Hon'ble Apex Court rendered in 1971 SCC 714. The subsequent ruling relied upon Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, was also noted, though without reference to its material parts setting the law relating to re-examination. It is further stated that by order dated 25.1.2005 passed in Cr. M.P. No. 1392 of 2004 this Court ordered for examination-in-chief and cross-examination of defence witness Naresh Kumar Gupta, but it never passed order not allowing re-examination and re-examination is a part of examination of witness which is examination-in-chief and cross-examination and had been advanced together u/s 137 of the Indian Evidence Act and the learned Court below has failed to appreciate that re-examination is a matter of right which is statutorily conferred and judicially settled, in so far as the bounds within which such right operates.

3. On the other hand, counter-affidavit has been filed on behalf of O.P. No. 2 wherein it has been stated that petition filed by the petitioner is fit to be dismissed as there is no merit and there is no substance in points raised by the petitioner in the petition. It is also stated in the counter-affidavit that since

several orders have been sought to be quashed in one petition and that is illegal and not maintainable. From the counter-affidavit, it further appears that the petitioner has been moving the High Court on one pretext or other just to delay the disposal of the case and the O.P. No. 2 complainant had earlier also moved the High Court for early disposal of the case and the O.P. No. 2 has enclosed some orders of this Court and of the Judicial Commissioner, Ranchi to show that on earlier occasions, orders have been passed for quick disposal of the case. Counter-affidavit, further states that the petitioner had earlier come for quashing of the order taking cognizance and entire criminal prosecution by filing WP (Cr) No. 169 of 2001 but the prayer of the petitioner was not allowed and the criminal writ petition was disposed of. The Judicial Commissioner, Ranchi vide order dated 4.6.2003 passed in Cr. M.P. No. 11 of 2003 had also directed for expeditious trial of the case and to conclude the same by August, 2003, (Annexure-OP-2/B). In WP (Cr) No. 19 of 2003 vide order dated 27th June, 2003, the High Court had also passed order for day to day hearing of the case (Annexure- OP-2/C). Besides this, the petitioner had filed a Criminal Revision No. 41 of 2003 before the Judicial Commissioner, Ranchi which was dismissed by 2nd Additional Judicial Commissioner-cum-Special Judge-1, CBI, Ranchi (Annexure-OP-2/D). Petitioner had come before the High Court through Cr. M.P. No. 602 of 2003 against the order framing charge and that petition filed by the petitioner was dismissed on 5.12.2003. (Annexure-OP-2/E). Thereafter the petitioner had moved before the Apex Court vide Special Leave to Appeal (Cri.) No. 608 of 2004 but the Apex Court vide order dated 20.2.2004 dismissed the Special Leave to Appeal (Cri.) Petition (Annexure-OP-2/F). Thereafter the petitioner moved the High Court vide Cr MP No. 881 of 2004 and Cr MP No. 825 of 2004 against different orders of the learned Court below and Cr MP No. 881 of 2004 was dismissed, but in Cr MP No. 825 of 2004 by order dated 27th August, 2004, the High Court passed order with some observation directing the learned Court below to ensure disposal of the case on an early date. (Annexure-OP-2/H). Thereafter O.P. No. 2 moved this Court vide Cr MP No. 1140 of 2004 and this Court was pleased to pass the following order :-

"Heard counsel for the petitioner. This Court is not inclined to pass any specific order/direction at this stage. If unnecessary adjournment is taken by one or other party and Court does not " dispose of the case at an early date, it will be open for the petitioner to bring the fact to the notice of the Court in its administrative side."

4. Thereafter again the petitioners moved before the High Court in Cr MP No. 1392 of 2004 which was disposed of on 25.1.2005 with the observations and directions that the petitioners-accused filed this Cr MP No. 1392 of 2004 with a view to unnecessarily drag the trial of complaint case No. C-46 of 1999 which is five and half years old and Court further observed that the petitioners-accused are handling this case in such a manner, which needs no sympathy. This Court was of the view not to allow the defence witness, however one chance was allowed to the petitioner with warning that in any case, no further opportunity

will be given to the petitioners for production of defence witness and further directed that proceeding will continue on day to day basis (Annexure-OP-2/J).

5. Heard learned counsel for the parties.

6. In course of hearing, learned counsel for the petitioners submitted that the petitioners were not violating the order of the Court passed in Cr MP No. 1392 of 2004 as the petitioners produced Naresh Kumar Gupta for examination-in-chief and cross-examination, but in course of cross-examination, new facts were brought on behalf of the complainant-OP No. 2 and it had become necessary to remove or controvert the same and for that, a petition for re-examination of Naresh Kumar Gupta (DW) was filed, but with the filing of the petition by the prosecution to defer the cross-examination, then the learned counsel for the petitioner put a mark on the corner of the petition that it is not being pressed as the Court has observed that it will be heard in due time and when on the next date, some documents were produced by the prosecution before the trial Court (Ext.-13), it had become necessary for the defence to remove the ambiguity or controvert the same by filing some documents which have been enclosed with the petition by recalling witness, but on 23rd March the case was closed on 24th March hearing was made on the petition and on 25th March this application was dismissed. The learned Court below failed to appreciate the legal points that re-examination is a part of examination-in-chief and in that connection, learned counsel placed reliance upon Rammi @ Rameshwar etc. Vs. State of Madhya Pradesh, wherein it has been held that the very purpose of re-examination is to explain matter which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. In this connection my attention was drawn to Paras 16 and 17 of the judgment, which is quoted hereinbelow:-

"16. The very purpose of re-examination is to explain matters which have been brought down in cross-examination. Section 138 of the Evidence Act outlines the amplitude of re-examination. It reads thus :

"Direction of re-examination.-The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine, upon that matter."

17. There is an erroneous impression that re-examination should be confined to clarification of ambiguities which have been brought down in cross-examination. No doubt, ambiguities can be resolved through re-examination. But that is not the only function of the re-examination. If the party who called the witness feels that explanation is required for any matter referred to in cross-examination he had the liberty to put any question in re-examination to get the explanation. The Public Prosecutor should formulate his question for that purpose. Explanation may be required either when ambiguity remains regarding any answer elicited during cross-examination or even otherwise. If the Public Prosecutor feels that

certain answers require more elucidation from the witness he has the freedom and the right to put such question as he deems necessary for that purpose, subject to Court to the control of the Court in accordance with the other provisions. But the Court cannot direct him to confine his question to ambiguities alone which arose in cross-examination.

Besides this, several other case laws have been cited on behalf of the petitioners such as 1987 PLJR 184 (FB); Vasant Tatoba Hargude and Others Vs. Dikkaya Muttaya Pujari, and Gopal Krishna Indley Vs. 5th Addl. District Judge, Kanpur and Others, to justify his prayer on the point of recalling of defence witness Naresh Kumar Gupta for his re-examination.

7. On the other hand, learned counsel appearing for the OP No. 2 complainant submitted that the High Court had given specific direction to the learned Court below vide order dated 25.1.2005 passed in Cr MP No. 1392 of 2004 that one opportunity shall be given to the petitioner for examining defence witness Naresh Kumar Gupta for his examination-in-chief and cross-examination and the learned Court had obeyed the direction and accordingly allowed examination-in-chief and cross-examination of the defence witness Naresh Kumar Gupta and discharged him. Thereafter there was no direction for re-examination and no such re-examination was allowed. It was further submitted that matter is lingering since 1999 and this case has entered in the year 2005 and still the matter has not been disposed of when so many orders for quick disposal of the case have been passed by the High Court and even Judicial Commissioner, Ranchi had passed orders for disposal of the case on an early date and High Court has passed order for continuing case on day to day basis, but due to delaying attitude adopted by the accused persons-petitioners, the case has not yet been disposed of and their prayer for allowing re-examination of the witness should be dismissed.

8. From the facts placed on record and from submissions of the parties, it is clear that the sole contention of the learned counsel for the petitioners is that an opportunity should be given to him for re-examination of DW Naresh Kumar Gupta who had already been examined and cross-examined and discharged. But before he was discharged, a petition for re-examination of the witness was filed in view of the fact that new fact has emerged by proving of some documents like Ext.-13 on behalf of the prosecution, then defence should have been allowed an opportunity to clarify the ambiguities which have been brought down in cross-examination by re-examination of the witness and that is the statutory right for which, the learned Court need not to look to the order of the High Court passed on 25.1.2005 in Cr MP No. 1392 of 2004 because, when it is so provided by way of legal provision, there will be no specific order of the High Court that if a prayer for re-examination is made, then the prayer should be allowed or not because when provision is there for re-examination to explain or clarify the ambiguities brought down in cross-examination and that is the legal and statutory right of the petitioners and that cannot be denied and for that there cannot be specific order of the High Court or Superior Court to do so or not to do so and the Court

was not right in rejecting the prayer and when the matter could have been settled in five minutes time, by unnecessarily refusing to allow petition, delay has been caused.

9. In that view of the matter, the prayer for re-examination of DW Naresh Kumar Gupta, as prayed for, is allowed and the order dated 25.2.2005 (Annexure-7) is hereby quashed. Further, Annexure-5 by which defence case was closed, is also quashed and all such orders which will come in the way of re-examination of DW Naresh Kumar Gupta, shall stand quashed and the petitioners will Be allowed only one opportunity to re-examine DW Naresh Kumar Gupta and for that, the learned Court below will proceed in accordance with law. Thereafter the learned Court below will dispose of the case at the earliest opportunity.

10. With these observations/directions, this application is disposed of.