

(1995) 02 MP CK 0064

In the Madhya Pradesh High Court

Case No : Writ Petition No. 152 of 1995

Chhatisagarh Mukti Morcha

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 301(2), 310, 327, 327(1)

Citation : (1996) CriLJ 2239 : (1995) ILR (MP) 204 : (1996) 3 RCR(Criminal) 197

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Nandita Haksay, for the Appellant; O.P. Namdeo, for No. 3 and J.P. Sanghi and U. Awasthy, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.—The petitioner is a registered political party, which has approached this Court under Article 226/227 of the Constitution of India for seeking a writ of mandamus or a writ of certiorari or any other writ, direction or order, directing the Additional Sessions Judge, District Durg, in whose court the 9 accused persons are being tried for commission of the murder of one Shankar Guha Neogi, a trade union leader, to hold the trial in open Court and other relief.

2. The first grievance of the petitioner is that the Trial Court instead of holding the trial in open Court is holding (the same, in camera) which cannot be held as Section 327 of the Code of Criminal Procedure (for short Code) indicates that the place in which any Criminal Court is held for the purpose of enquiring into or trying any offence shall be deemed to be an open Court, to which, the public generally may have access, so far as the same can conveniently contain them; the restriction contemplated is number of persons to Sub-section (1) of Section 327 of the Cr. P.C. which could be contained in the premises where the Court sits. Sushree Nandita Haksar, learned counsel for the petitioner, placed reliance on a

decision of the Supreme Court in case of Kehar Singh and Others Vs. State (Delhi Administration),

3. Every Court of justice is open to every citizen. Publicity is the authentic hallmark of judicial as distinct from administrative procedure, the Criminal trial or enquiry is not an exception. The actual presence of the public is never of course necessary, however, the Court must be open to any, who may present themselves for admission as public Court houses are said to be temples of justice where all who seek justice may enter and where none, being called on to help in justice being administered should refuse to come. That justice should be properly administered in the interest of all and not merely of the parties in a particular case. It is for this reason that the highest in the land together with the lowest have entered the portals of courts of law without hesitation and with prayerful humility.

4. In case of Kehar Singh and Others Vs. State (Delhi Administration), the Supreme Court, while considering the case of holding the trial in jail has observed that Section 327 of the Code is clear, and wherever the trial is held it becomes a venue of trial of a criminal case, it is deemed to be in law an open place and everyone who wants to go and attend it is open for him except the restriction contemplated in respect of number of persons which may be contained in the premises where the Court sits. The Courts further observed in para 183 thus:

"It may now be stated without contradiction that Jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court, there should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court House. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice."

5. Shri O.P. Namdeo, learned counsel for the respondent No. 3, submitted that considering the paucity of the space, and the trial being of a trade union leader, the special public prosecutor made a prayer for holding the trial in camera, which was not opposed by the accused persons, therefore, the Trial Court ordered trial to be held in camera so as to avoid inconvenience to the all concerned as the Court room is not enough to accommodate large number of public. In the opinion of this Court the order of holding trial in camera is based on a misconceived notion. The Court room is a temple of justice, where everybody including parties and the complainant have got a right to access, access is not limited to parties. In case of number of persons being more, the Trial Judge, certainly can regulate the access in such manner so that the proper and fair administration is not obstructed. Therefore, the order of the trial Court holding the trial in camera

cannot be sustained and is hereby quashed.

6. Other grievance of the petitioner is that the complainant should be allowed to assist the public prosecutor. Learned counsel for the respondent No. 3 in its reply has stated that the assistance may be rendered within the parameter of Sub-section (2) of Section 301 of the Code.

7. Learned counsel for the petitioner submits that in fact there were other accused persons, who have not been put to trial though, the report was lodged besides the accused who are put to trial against Other also, therefore, to put question to the prosecution witnesses or to cross-examine the defence, if any, produced so that if the trial Court finds that any person not being the accused has committed the offence, who should be tried together with the accused persons may proceed against such person u/s 310 of the Code.

8. In the opinion of this Court, it would not be proper to express any opinion at this stage for two reasons, first as the public prosecutor has already agreed for the assistance which may be provided to him in view of Section 301(2) of the Code and secondly if the complainant feels that the public prosecutor is not taking interest or take different attitude or abdicating his functions, in the proceedings it is well settled that the private counsel can examine or cross-examine the witnesses or even address in the manner laid down in Section 301(2) of the Code, and the complainant in such a situation may invite the attention of the Court. It would be the duty of the Court to see that justice does not suffer, and, it would be open to the Court to act under Sub-section (2) of Section 301 or to allow the appointment of a counsel by the complainant for conduction of a case.

9. Learned counsel for the petitioner submitted that the complainant is not being provided copies of the statements recorded, therefore, a direction be issued to the trial Court to supply the copies of the statements of the witnesses recorded. For that no direction is necessary. If the party applies for the copies of the statements of the witnesses or documents of the judgment, that has to be applied as per rules.

10. However, before parting with the case a direction to the trial Court for expeditious disposal is necessary as the trial is pending since 1992, though, as stated at the Bar that number of prosecution witnesses is much even then, it is expected of the trial Court to see that the trial it concluded expeditiously for that the trial Court shall take all necessary steps and shall record evidence of witnesses *de die in diem*.

11. As a result of aforesaid discussion, the petition is disposed of with a direction to the trial Court to proceed with the trial in open Court in accordance with law. No costs.