

(1980) 06 SHI CK 0007
In the High Court Of Himachal Pradesh

Dawarka Dass

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-06-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 353

Citation : (1980) CriLJ 1018 : (1980) ShimLC 265

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Judgement

V.P. Gupta, J.—This petition has been filed u/s 482 of the Criminal P. C. (hereinafter shortly called the Code) read with Article 227 of the Constitution of India and Section 397 of the Code, by the petitioner challenging the order passed on 25th February, 1980 upon an application filed u/s 311 of the Code by the petitioner for recalling the prosecution witnesses who had been examined in the case on 14th January, 1980.

2. The brief facts of the case are that the petitioner was prosecuted u/s 353, I.P.C. and Section 7 of the Essential Commodities Act, and he was charge-sheeted for the said offences on 14th May, 1979. The petitioner did not plead guilty to the charges framed against him and claimed to be tried. The Magistrate fixed the case for the evidence of the prosecution for 28th June, 1979. On 28th June, 1979, the whole of the prosecution evidence could not be examined because the counsel for the petitioner stated that he was not feeling well and had developed some trouble while coming from his house to the courts. One formal witness, Nar Singh S. H. O. was, however, examined on 28th June, 1979, and the remaining witnesses were bound down for 2nd August, 1979.

3. On 2nd August, 1979, the prosecution witnesses were present but their statements were not recorded as the court of the Judicial Magistrate was being inspected on that date and as such the case was postponed to 6th September,

1979. On 6th September, 1979, Roop Ram, Sub-Inspector, Food and Supplies (a P. W.) was not present and had submitted an application for adjournment. The other P. Ws. were present but the counsel for the petitioner was not available as he was busy in connection with some death and, therefore, the court adjourned the case for prosecution evidence on 25th October, 1979. The petitioner paid the expenses of the two witnesses who were present on that date and whose statements could not be recorded due to the absence of the petitioner's counsel. On 25th October, 1979, the prosecution witnesses were present but the accused was absent and as such the court passed the order that the P. Ws. be bound down for 14th January 1980 and that bailable warrants of arrest be issued against the petitioner for that date. It was further ordered that the expenses of the witnesses shall be paid by the petitioner.

4. On 27th October, 1979, the petitioner filed an application stating that he did not appear in the court on 25th October, 1979, as he had a wrong impression that the case was fixed for 27th October, 1979, and that his absence for 25th October, 1979, was unintentional. that court passed an order on this application on 27th October, 1979 and ordered that the bailable warrants of arrest against the petitioner be not issued thereby impliedly meaning that the absence of the petitioner for 25th October, 1979 was condoned and his explanation as mentioned in the application was accepted.

5. On the next date, i.e. 14th Jan, 1980 another application was filed by the petitioner to the effect that his counsel had gone to Simla due to certain urgent work and for this reason the counsel of the petitioner was unable to attend the court and as such the petitioner prayed that the date for recording evidence of the witnesses be adjourned.

6. This prayer of the petitioner was not accepted by the Magistrate and as a consequence the statements of three P. Ws. were recorded on 14th January, 1980, the prosecution evidence was closed, and the case was listed for the statement of the petitioner u/s 313 of the Code for 25th Feb. 1980.

7. On 25th February, 1980, an application was filed by the petitioner through his counsel u/s 311 of the Code with a prayer for recalling the P. Ws. so that they may be cross-examined. It was stated in the application that the statements of the P. Ws. had been recorded on 14th Jan. 1980 in the absence of the petitioner's counsel and the witnesses could not be cross-examined by petitioner personally as the petitioner himself is an illiterate person and that due to the non-cross-examination of the witnesses great injustice is likely to be caused to the petitioner. It was further alleged in the application, that in the interest of justice the re-calling of the witnesses for cross-examination by the petitioner/his counsel is essential.

8. This application was dismissed by the Magistrate on 25th February, 1980, and he opined that the petitioner is using delaying tactics, and that every time he had been seeking adjournment on one pretext or the other.

9. Feeling aggrieved from this order the present petition has been filed by the petitioner.

10. I have heard Shri H.K. Bhardawaj, Advocate, on behalf of the petitioner and Shri L.S. Panta, Deputy Advocate-General, for the State.

11. Shri Panta appearing on behalf of the State contended that this revision petition u/s 397 of the Code is not maintainable as the order under challenge is an interlocutory order and he contended that the petition should be dismissed on this preliminary objection. It was further contended that the petitioner had always been trying to get adjournments and his conduct was mala fide therefore even powers u/s 482 of the Code or Article 227 of the Constitution should not be invoked. Shri Panta relied upon an authority of the Orissa High Court in Bhima Naik and Others Vs. State of Orissa, in support of his contentions.

12. Shri Bhardawaj appearing on behalf of the petitioner contended that if it is held that Section 397 of the Code is not applicable then the powers of the High Court u/s 482 of the Code are very wide and similarly under Article 227 of the Constitution the High Court is empowered to correct the orders for the ends of justice and that in the instant case these powers should be invoked because otherwise the petitioner is likely to be condemned without giving him a reasonable opportunity of hearing. It was also contended by the learned Counsel that the non-interference with the order is likely to cause great harassment to the petitioner and as such it is a fit case for invoking the extraordinary powers.

13. After hearing the learned Counsel for the parties and after going through the record of the case, I find that the provisions of Section 397 of the Code cannot be invoked in the present case. The order which is sought to be challenged is an interlocutory order passed by the Magistrate during the course of the trial and such orders are not revisable u/s 397(2) of the Code.

14. Since there is a clear bar in Section 397(2) of the Code, therefore, it is also very doubtful as to whether the provisions of Section 482 of the Code can be made applicable in the instant case or not.

15. As the petitioner has also invoked the jurisdiction of this Court under Article 227 of the Constitution, therefore, it has to be determined as to whether in the circumstances of the present case the powers under Article 227 should be exercised or not. Such powers are to be exercised sparingly when the interference of the High Court is extremely necessary for meeting the ends of natural justice or for any other causes, as have been enumerated by the various High Courts while giving interpretation to the applicability of the provisions of Article 227.

16. In the present case the record of the case shows that the evidence of the prosecution witnesses who are sought to be recalled has been recorded on 14th January, 1980, in the presence of the accused-petitioner with-out any cross-examination having been conducted by the accused, or his counsel or even the

court. The accused-petitioner had filed an application on 14th January, 1980, itself, for adjournment of the case as his counsel was absent. The record of the proceedings also shows that the counsel for the accused-petitioner had been absenting himself repeatedly but the record further shows that one cause or the other had always been given for such absence of the petitioner's counsel. The petitioner had also been burdened by the court with the costs, i.e. diet money, etc. which was to be paid to the prosecution witnesses who were not examined on the fixed dates due to the absence of the counsel for the petitioner. Further on, it appears that such costs, etc. were duly paid by the petitioner as and when ordered by the court.

17. It is true that the court is not bound to adjourn the cases unnecessarily but in the present case, I find that the petitioner's request for adjournments were being accepted on all hearings prior to 14th January 1980 impliedly meaning that sufficient cause for granting adjournment was found to be proved. It was only for 14th January, 1980, that request for adjournment was not accepted although the petitioner's counsel was absent and an application had been given requesting for an adjournment.

18. The accused-petitioner in his statement u/s 313 of the Code and even in the present petition had made serious allegations against Shri Rup Chand, Inspector, Food and Civil Supplies. Therefore, after taking into consideration the principles of natural justice, I feel that it is necessary that the accused-petitioner should be afforded an opportunity of being heard. No cross-examination has been conducted in the statements of the prosecution witnesses who have been recorded on 14th January, 1980. Naturally such statements of the prosecution witnesses, who are material witnesses in the case will remain unchallenged and the accused is likely to suffer and may ultimately face conviction. Therefore, in the interest of justice and keeping in view the principles of natural justice, it is a fit case in which the accused-petitioner should be allowed an opportunity for putting his case in cross-examination to the prosecution witnesses and also afforded an opportunity for cross-examining the prosecution witnesses to prove that the case filed against him is a false one. If this opportunity is not allowed then the accused-petitioner is likely to suffer due to his negligence or the negligence on the part of his counsel and a serious miscarriage of justice is likely to take place. Similar views were taken in *Karam Chand Thepar (Private) Ltd. Calcutta v. Workmen of North Chirimiri Colliery 1968 Lab IC 712 (Madh Pra)*, and *Groz Beckert Sabool Ltd. Vs. Jupiter General Insurance Co. Ltd. and Others*,

19. Keeping in view the above considerations, I, therefore, allow the application of the accused-petitioner for recalling of the prosecution witnesses and set aside the order of the Judicial Magistrate, dated 25th February, 1980. The accused-petitioner shall appear in the court of the Judicial Magistrate 1st Class, Nahan, on 27th June, 1980.