
(2023) 06 SHI CK 0041
In the High Court Of Himachal Pradesh
Case No : CR.MMO No. 595 of 2022

Dinesh Chander Sharma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 19-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 311, 313, 315, 315(1)(a), 362, 393, 397
Indian Penal Code, 1860 — Section 353, 506

Citation : (2023) 06 SHI CK 0041

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Mohinder Zharaick

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has assailed order dated 02.05.2022 passed by learned Additional Sessions Judge (I), Una, District Una, H.P. in Criminal Revision No. 29/2021, whereby order dated 13.09.2021 passed by learned Chief Judicial Magistrate, Una in case RBT No.32-II-16/06, has been upheld.

2. Vide order dated 13.9.2001 learned trial court had rejected the prayer made by the petitioner to the effect that the orders directing him to furnish surety bond and to deposit expenses for defence witnesses required reconsideration even after having been affirmed by this court. In result the opportunity to lead defence evidence was also closed.

3. Petitioner assailed order dated 13.9.2021 passed by learned trial Court by filing Criminal Revision under Section 397 Cr.P.C. Learned Additional Sessions Judge (I), Una, District Una, dismissed the Criminal Revision filed by the petitioner vide order dated 02.05.2022, hence the present petition.

4. Petitioner has raised three grounds against the impugned order as under:

(a) The impugned order is illegal and arbitrary being against the facts of the case and the principles of administration of justice.

(b) The impugned order has been passed without the application of judicial mind.

(c) The impugned order has caused total failure of justice.”

5. The grievance as projected by the petitioner in the instant petition is two-fold. Firstly, that he could not lead defence evidence as he was wrongly denied the right to examine defence witnesses at the expenses of the state and secondly the order passed by learned trial court and the revisional court directing him to furnish surety bond was wrong and illegal.

6. I have heard Mr. Dinesh Chander Sharma, petitioner in person and Mr. Mohinder Zharaick, learned Additional Advocate General for the respondent in detail and have also gone through the entire record of the trial court carefully.

7. The facts of the case glaringly portray and exhibit an extremely dismal rather shocking state of affairs in respect of judicial proceeding in trial of a summons case under sections 353 and 506 IPC instituted against the petitioner on a police report. The cognizance was taken by learned Additional Chief Judicial Magistrate, Una as far back as on 22.4.2006. More than 17 years have elapsed but the trial has not concluded.

8. The reasons for such inordinate delay in conclusion of a trial are unfolded from the perusal of records as under:

(i) On conclusion of prosecution evidence, the statement of petitioner herein accused was recorded under Section 313 Cr.P.C. on 8.9.2009. The accused had opted to lead defence evidence.

(ii) On 22.01.2010, accused preferred an application under Section 315 (1) (a) Cr.P.C. seeking permission to examine himself as his own witness. The earlier application under Section 315 Cr.P.C. was pending, accused preferred another application under Section 311 Cr.P.C. on 30.01.2010 with a prayer that the defence witnesses sought to be examined by the accused be summoned at State expenses.

(iii) On 04.06.2011 learned trial Court allowed the application of accused under Section 315 Cr.P.C. However, the prayer of accused for summoning defence witnesses at State expenses was disallowed on 23.04.2014.

(iv) The petitioner/accused then filed another application under Section 311 Cr.P.C. with a prayer to recall order dated 23.4.2014.

Learned trial Court rejected such application of the petitioner vide order dated 24.01.2015. Petitioner did not stop here, he on 21.03.2017 made a further prayer before learned trial Court for reconsideration of order dated 24.01.2015. His prayer again met the requisite result of rejection.

(v) On 17.04.2017, the accused was not present before the learned trial Court. His absence resulted in forfeiture of his bail bonds and issuance of non-bailable warrants for his production. Petitioner/ accused assailed order dated 17.4.2017 by filing revision petition under Section 397 Cr.P.C. Learned Additional Sessions Judge (II) on 10.8.2017 dismissed the revision petition and directed the petitioner/accused to furnish bail bonds to the satisfaction of learned trial Court. Even after dismissal of the revision petition, petitioner/accused on 24.8.2017 filed application before learned trial Court for recalling of order dated 17.4.2017, which was dismissed on 19.9.2017 as not maintainable.

(vi) On 21.9.2017, petitioner prayed before the learned trial Court for grant of time to furnish bail bonds. Nonetheless, the proceedings of the case thereafter came to be adjourned from time to time till 20.5.2019 on the pretext that petitioner had approached this Court for redressal of his grievances.

(vii) On 04.05.2019 this Court decided Cr.MMO No.89 of 2018 filed by the petitioner. The petitioner was allowed to examine the defence witnesses at his own expenses with liberty to avail assistance of the Court in summoning the witnesses as per Rules. As regards other grievance petitioner, on his prayer, was permitted to file fresh proceedings before the appropriate forum/court of law including this Court.

(viii) Petitioner filed yet another petition before this Court being Cr.MMO No.631 of 2019 laying challenge to orders dated 17.4.2017 and 19.9.2017 passed by learned Chief Judicial Magistrate, Una in case RBT No.32-II-16/06. The petition so filed by the petitioner/accused was also rejected being not maintainable in view of the provisions of Sections 362 and 393 of the Code of Criminal Procedure.

(ix) Thereafter on 12.2.2020, petitioner was afforded last opportunity to lead defence evidence by learned trial court. The matter again came to be adjourned thereafter. Lastly, the petitioner yet again filed an application before learned trial Court alleging inter alia that the orders dated 17.4.2017 passed by learned trial Court and orders dated 4.5.2019 passed by this Court in Cr.MMO No.89 of 2018 as also order dated 03.01.2020 passed by this Court in Cr.MMO No. 631 of 2019 were non-est. His prayers were rejected on 13.9.2021 against which petitioner once again availed the remedy of Revision Petition and on its rejection, petitioner is before this Court by way of instant petition.

9. The right of petitioner to seek legal remedies, wherever he felt aggrieved, could be availed within legally prescribed limits. Petitioner himself being a practising Advocate did not have any justification to repeatedly approach the Court for same relief, which once stood denied to him. The petitioner time and again kept approaching the trial Court, revisional Court and even this Court with an endeavor to impress upon a view point which according to him was correct without having little observance to the fact that such view point had failed to satisfy the courts.

10. Petitioner while presenting his case before this Court contended that the

Rules provided for the payment of expenses to defence witnesses by the State. He had placed reliance on Volume 3, Chapter 9, Part-A of the Rules made by the Punjab Government regulating the payment of subsistence and travelling allowances to witnesses attending the trial etc. in subordinate Courts.

The Rules referred to by the petitioner, in the considered opinion of this Court, does not help his cause. Petitioner has not been able to show any specific Rule which mandated the payment of expenses of defence witnesses by the State. Even otherwise, the contention of petitioner in this behalf stood rejected by this Court while deciding Cr.MMO No. 89 of 2018 vide consent order dated 4.5.2019. The relevant extract of order dated 4.5.2019 passed in Cr.MMO No. 89 of 2018, read as under:

"2. As agreed, without going into the legality of orders impugned, this petition is disposed of by holding that orders passed by learned trial Court dated 23.4.2014, 24.1.2015 and 21.3.2017 are modified to the extent that petitioner shall be at liberty to examine witnesses mentioned in his application filed under Section 311 of the Cr.P.C.

Petitioner shall bear the expenses for summoning the said witnesses including process fee, diet money etc. Court assistance shall be provided to the petitioner for summoning the witnesses as per Rules."

11. Thus, the petitioner had not been left with any right to re-agitate the same matter before learned trial Court. In the facts as detailed above, the impugned order cannot be faulted. Petitioner having availed the right to lead defence evidence, failed to do so for a period of almost 13 years. He had no justifiable reason to seek further opportunities to lead defence evidence only on the ground that he was not ready and willing to pay the expenses for the witnesses. His contention after having been rejected by Court having jurisdiction, his persistence with the same plea was clearly not bonafide.

12. Similarly, the petitioner had persisted with a contention that he was not liable to furnish surety bond in terms of order dated 10.8.2017 passed by learned Additional Sessions Judge (II), Una. The end result remained that petitioner has been able to avoid the compliance of orders passed by learned trial Court with impunity. He did not furnish any bail bond after forfeiture of his bond vide order dated 17.4.2017. Merely because initially on 25.4.2006, learned trial Court had considered the personal bond of petitioner as sufficient security for his presence during the trial, he could not claim as a matter of right not to comply with the subsequent court orders whereby he was required to furnish personal along with a surety bonds. After passing of judgment dated 3.1.2020 by this Court in Cr.MMO No.631 of 2019 the fate of the plea raised by petitioner had been sealed. He could not re-agitate the matter de-novo and the conduct of petitioner in doing so again cannot be said to be bonafide. He himself is a legal practitioner and was well aware about the intricacies of law.

13. In light of above discussion, there is no merit in the petition and the same is

dismissed. Since the trial of the case has already been delayed considerably, learned trial Court is directed to conclude the same on or before 31.8.2023.

14. The petition is disposed of in the aforesaid terms, so also the pending application(s), if any.