
(2020) 01 RAJ CK 0373

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No.1314 Of 2019

Dr. Kanwardeep Randhaw

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 311

Citation : (2020) 01 RAJ CK 0373

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Sanjay Yadav, Takhat Singh, S.S. Ola

Final Decision : Dismissed

Judgement

1. Heard both the learned counsels on application for vacating the stay order passed on 26.2.2019 as well as on the merits of the case.

2. This criminal misc. petition has been preferred by the accused-petitioner challenging the order whereby application moved under Section 311

Cr.P.C. by the complainant's counsel for seeking calling of two witnesses namely Dr. Beena Bhatnagar and Dr. Usha Sharma who were shown as

prosecution witnesses no.10 and 11 in the charge sheet, has been allowed.

3. Learned counsel appearing for the petitioner submits that both the said witnesses had been dropped by the Public Prosecutor in 2008 from

appearing as witnesses and thereafter the proceedings have advanced and after the entire prosecution witnesses have been examined, the case was

posted for final arguments. As a matter of fact, twice the case was finally heard but on account of the transfer of the Presiding Officer, the case

could not be finally decided. Learned counsel submits that in order to harass the petitioner, the present application has been moved after a period of 13

years seeking calling of witnesses. Although, the other witnesses have already put in appearance and have stated that no case for negligence can be

said to have been committed by the accused-petitioner. Learned counsel for the petitioner relies on the judgment of the Apex Court in the case of

Swapan Kumar Chatterjee Versus Central Bureau of Investigation, 2019 (2) WLC (SC) Cri. 415 to submit that summoning of witnesses at belated

stage causes great prejudice to the accused and the power should be very sparingly exercised.

4. Per contra, learned counsel for the complainant submits that the delay in proceedings occurred on account of the petitioner having filed a writ

petition before this court challenging the decision taken by the Medical Council of India relating to suspension of the petitioner's license for 6 months.

The said writ petition was pending from the year 2016 upto 2019 when it was dismissed in default. In the said writ petition, there was a stay granted

and continued. On account of the same the petitioner sought adjournment in the case pending before the competent trial court, therefore the

application for calling of the two witnesses was delayed. It is submitted that both the doctors are material witnesses as they were present at the time

of the operation and would be able to give the exact evidence with regard to the fact whether negligence was caused or not in the operation which

resulted in cerebral palsy of the complainant's son who ultimately expired at the age of 12 years.

5. I have considered the submissions.

6. In Swapan Kumar Chatterjee (supra), the observations were made as under:-

12. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be

exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this

Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after

taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view

that the application has been filed as an abuse of the process of law.

13. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witnesses earlier is not satisfactory, the

summoning of the witnesses at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not

encourage the filing of successive applications for recall of a witness under this provision.

In the aforesaid backdrop, in the facts and circumstances of the case, the Supreme Court reached to the conclusion that several opportunities were

given to procure attendance of witnesses to the Central Bureau of Investigation. In the facts thereof, the application under Section 311 Cr.P.C. was

not allowed as earlier also application for calling the witness had been moved and the same had been rejected.

7. It is a settled law that in each case the ratio as laid down by the Apex Court is required to apply by taking into consideration the facts and

circumstances therein.

8. In the present case, as noticed above, the witnesses mentioned in the charge sheet, were never called by the Public Prosecutor. The complainant

has a valid ground to claim that two witnesses who are essential for the purpose of filing of the chargesheet as against the petitioner ought to have

been examined. The trial court was therefore justified in calling the two witnesses.

9. The present criminal misc. petition filed by the petitioner- accused appears to be only the practice to delay the proceedings. This court is satisfied

that in order to make the ends of justice both the witnesses are summoned and examined. Of course, the petitioner would have the full right to cross

examine the said two witnesses of the prosecution. It is expected that the trial court shall complete the trial expeditiously but not later than a period of

4 months henceforth.

10. With the said observations, this petition is found to be without merit and the same is accordingly dismissed. Interim order passed by this court

stands vacated.