
(2012) 07 JH CK 0113

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 442 of 2010

Govind Yadav and Another

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 311, 313
Penal Code, 1860 (IPC) — Section 308, 323, 324, 34, 341

Citation : (2012) 3 JLJR 314

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : K.P. Choudhary, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. Petitioners have filed this writ application challenging the order dated 7.10.2010 passed by learned Additional Sessions Judge, F.T.C.-II, Tenughat, in S.T. No. 216 of 2003, whereby the application filed by the prosecution u/s 311 of the Cr.P.C. for examining the witness namely, Bhubneshwar Gope was allowed and by the same order, the Court below has also directed for examination the Doctor of Neurosurgery, Department of RIMS, Ranchi, with respect to the treatment of the witness Bhubneshwar Gope in the hospital.

2. The facts giving occasion for passing the order dated 7.10.2010 by the Court below, are that the petitioners are facing trial in ST. No. 216 of 2003, arising out of Gomio P.S. Case No. 80 of 2002 corresponding to G.R. No. 677 of 2002 for the offence under Sections 323/34, 341/ 34, 324/34 and 308/34 of the IPC. It appears that in the said trial, the prosecution evidence was closed on 12.12.2006 and the date was fixed for recording the statements of the accused persons, which were recorded on 8.1.2007 u/s 313 of the Cr.P.C., and the matter was posted for evidence of the defence. After taking the evidence adduced by the defence, the defence evidence was also closed on 19.1.2007 and the case was

fixed for final arguments. At the stage of arguments, a petition u/s 311 of the Cr. P.C. was filed by the prosecution for examining five witnesses, namely, Bhubneshwar Gope, Chhotava Devi, Yadunandan Yadav and two doctors. The said application was allowed by the Court by order dated 17.2.2007 taking into consideration, the fact that Bhubneshwar Gope was injured in the occurrence, who had undergone treatment at RMCH, Ranchi and Central Hospital, C.C.L., Gandhinagar. However, by the said order, the Court also directed the prosecution to examine all the witnesses within four consecutive dates making it clear that no further time would be allowed for the same. It appears that thereafter two witnesses were examined, but Bhubneshwar Gope could not be examined, even though he appeared for his evidence on two dates, when he could not be examined due to the fact that on one date the Presiding Officer was on leave, and on the other date the Presiding Officer was transferred. As on the subsequent dates the witness was not produced by the prosecution, the prosecution evidence was again closed on 29.11.2007. On 19.11.2008, the prosecution again filed petition u/s 311 of the Cr. P.C., for allowing Bhubneshwar Gope to be examined as a witness. The said application was however rejected by a detailed order dated 18.12.2008 by the Court below, stating that enough time was given to the prosecution for examining Bhubneshwar Gope and other witnesses, but it appeared that the prosecution was quite reluctant in producing the witnesses. The Court was also of the opinion that allowing the said witness to be examined, would amount to review its earlier order. Again on 23.9.2010, the prosecution filed application u/s 311 of the Cr. P.C. for evidence of Bhubneshwar Gope and the I.O. of the said case. The defence did not object the examination of the I.O., and accordingly, the I.O. was examined and cross-examined. But so far as the witness Bhubneshwar Gope was concerned, the defence objected the same, but by the impugned order dated 7.10.2010, the Court below allowed the prosecution to examine Bhubneshwar Gope as witness and has also ordered for examination of the doctor, who had treated said Bhubneshwar Gope.

3. Learned counsel for the petitioner has challenged the impugned order submitting that Bhubneshwar Gope was not a charge-sheet witness and his statement was not accorded by the police u/s 161 of the Cr.P.C. Even though, the prosecution wanted to examine the said witness and sufficient opportunity was given to the prosecution for examining the witness but in spite of that, witness was not produced. Learned counsel submitted that charges were framed in the trial on 14.10.2003 itself, whereas even after closing of the prosecution evidence, sufficient opportunity was given to the prosecution for examining Bhubneshwar Gope, but the said witness was not examined. By order dated 7.10.2010, the Court below has allowed the application for examination of Bhubneshwar Gope which only amounts to filling up the lacuna and shall prejudice the defence of the petitioners. Learned counsel accordingly, submitted that the impugned order passed by the Court below cannot be sustained in the eyes of law.

4. Learned counsel for the State on the other hand has opposed the prayer and

has pointed out that from the impugned order it would appear that said Bhubneshwar Gope was injured person and accordingly, examination of Bhubneshwar Gope was necessary for the ends of justice. It has been pointed out that the impugned order would show that Bhubneshwar Gope was present for examination in the Court below on two dates, but his evidence could not be recorded due to absence of Presiding Officer. Learned counsel accordingly, submitted that Bhubneshwar Gope being injured, is an important witness for the prosecution and his examination in the trial is necessary for the ends of justice and as such, there is no illegality in the impugned order passed by the Court below.

5. Having heard learned counsel for both the sides and upon going through the record, I find that by the impugned order that the Court below has directed for examination Of such witnesses, who are not named in the charge-sheet. Their statements were not recorded by the police during investigation. This apart, sufficient opportunity was given to the prosecution for examining the witnesses even after closing the prosecution evidence, but the prosecution did not avail the opportunity and the prosecution evidence was again closed after giving sufficient opportunity to the prosecution. In this view of the matter I am of the considered view that the examination of the witnesses, who were not named in the charge-sheet and whose statements had not been recorded by the police during investigation and one of whom was not produced by the prosecution even though the Court had given sufficient opportunity to the prosecution, shall certainly prejudice the defence of the petitioners, apart from allowing the prosecution to fill up the lacuna. Accordingly, the impugned order cannot be sustained in the eyes of law. For the foregoing reasons, the impugned order dated 7.10.2010 passed by learned Additional Sessions Judge, F.T.C.-II, Tenughat, in S.T. No. 216 of 2003 is hereby, quashed and the Court below is directed to dispose of the trial as expeditiously as possible. This writ application is accordingly, allowed.