
(2002) 01 AHC CK 0139
In the Allahabad High Court
Case No : Criminal Revision No. 47 of 2002

Jai Prakash Rai and Ors.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311

Citation : (2002) 01 AHC CK 0139

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

Final Decision : Allowed

Judgement

S.K. Agarwal, J.—Supplementary affidavit filed today be taken on record.

2. Heard learned Counsel for the applicants and learned A.G.A.

3. It is a State prosecuted trial. The trial is pending since 1731988 when the case was committed to the Court of Sessions and cognizance was taken in the matter. A large number of dates for evidence were allowed to the prosecution side for producing the witnesses. With great difficulty the evidence could be concluded and arguments also could be concluded partly on 692001. For conclusion of rest of the arguments the trial Court fixed 1392001. On the particular date, i.e. on 1392001, a special counsel, who was never a Counsel earlier in the case stepped into and had made an application for summoning of a witness, who despite opportunity to the prosecution in the past was not produced. Thereafter, fresh applications were moved, but he was not produced on 1992001. That application (dated 1392001) was allowed and the above date (1992001) was fixed for production of that witness (Mahangu). Even on 1992001 the witness was not produced, instead the State counsel, who was appointed to conduct the trial, moved an application for adjournment. On this date also another date was allowed to the prosecution and 2692001 was fixed for recording evidence of this witness. Yet again the prosecution moved another application whereupon, on this date, 4102001 was fixed. On 4102001 there is nothing on the ordersheet which may show that the witness was present. The Advocates, on the date, were on

strike and so 16102001 was fixed. On 16102001 the case could not be taken up due to strike by the Advocates. On 30102001 the case was postponed on account of the application moved by the accused persons. On 12112001 the arguments were again heard and 13112001 was fixed. Even the written arguments were also field. On 13112001 the date was again allowed for recording evidence of this witness to the special counsel. 20112001 was fixed for his statement. On 20112001 again 10122001 was fixed for recording of the statement of the above witness at the instance of the State counsel. On 10122001 serious objection was raised by the accused persons. Rejecting those objections 2012002 has been fixed for production of that witness.

4. It is contended by learned Counsel for the applicants that this is a gross abuse of the process of the Court. There is a clash between two rival factions in the village and the witness, who is required by the Court to depose at the instance of an intervening Advocate, is a labour. From his conduct it is apparent that he is not willing to depose for or against any of the warring factions. The rival factions wield considerable influence in the village policy and a poor labour cannot afford to annoy any one of them. In these circumstances, presence of the witness, as is evident from the record on a mere impossibility. The trial Court ought to have gone into this aspect before allowing the application. It has itself said in its order dated 13112001 that in the past also number of opportunities were afforded to the prosecution for production of this witness. In the circumstances the power under Section 311 Cr. P.C. ought not to have been exercised by the trial Court. Moreover, the length of time for which this trial languished in Court should have also been given due consideration before allowing this liberty to the prosecution side.

5. In the circumstances, I find sufficient force in the contentions that after the arguments having been heard twice partly it was not feasible or proper on the part of the trial Court to have allowed the prosecution this liberty. Accordingly, this revision is allowed at the admission stage. The orders dated 13112001 and 10122001 fixing 2812002 for production of the witness are hereby quashed. Since it is a State prosecution, therefore, I have not found it proper to issue notice to the opposite party, as that would have dilated the hearing of this revision today and this also further dilate the trial.

Revision allowed.