

(1997) 02 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 22474-M of 1996

Lekh Raj and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 482, 540
Penal Code, 1860 (IPC) — Section 109, 406, 498, 498A

Citation : (1998) CriLJ 1141 : (1997) 2 RCR(Criminal) 180 : (1997) 2 RCR(Criminal) 186

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : R.S. Cheema and D.P. Singh, for the Appellant; S.N. Gaur, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Lekh Raj, Ashok Kumar and Ms. Bishni Devi alias Krishan, Have filed the present petition u/s 482 of the Code of Criminal Procedure for the quashment of the order dated 19-10-1996 passed by the court of Judicial Magistrate 1st Class, Panipat, who allowed the application of the complainant u/s 311 of the Code of Criminal Procedure and ordered for the ex-examination of Har Bhagwan, Pokhar Dass and Parma Nand, prosecution witnesses whose statements were recorded by the trial Magistrate.

2. The brief facts of the case are that sister of Har Bhagwan, respondent No. 2 was married with Ashok Kumar, petitioner No. 2 and a criminal complaint was filed against the present petitioners along with others for the offences under Sections 406 and 498 read with Section 109, I.P.C. Proceedings vis-a-vis some of the accused were quashed and after the said quashment, the prosecution continued against the present three petitioners.

Vide orders dated 12-2-1990, the proceedings against three accused namely

Renu, Karam Chand and Kamlesh were quashed for the offences u/s 498-A read with 109, IPC but Section 406, IPC was allowed to stand. Charges in this case were framed against the accused on 7-1 -1991 and thereafter the evidence of the prosecution was recorded. On 2-9-1996, application u/s 311, Cr.P.C. was moved by Harbhagwan Singh respondent No. 2 alleging that his sister was married to Ashok Kumar on 4-6-1979 and that the accused persons treated her sister with utmost cruelty and she was turned from the house of her in laws. Lajwanti was turned out from her matrimonial home and accused persons retained dowry articles in spite of the facts that the complainant asked the return of dowry articles. It is also stated by the complainant that his sister Lajwanti died in the year 1992 and when the evidence of the prosecution was closed , the relatives of the complainant were under shock and grief on account of the death of Lajwanti and for that reason some of the prosecution witnesses could not give their evidence in detail. As all these articles of stridhan are lying with the accused, and they are misappropriating the same, the complainant wants to re-examine himself, Pokhar Dass and Parma Nand witnesses whose statements were earlier recorded. Rather re-examination of these witnesses is very essential to the just decision of this case.

3. This application was opposed by the accused who filed the reply dated 18-9-1996 and it was pleaded that the statement of the complainant was recorded on 3-3-1994 after about 2 years of the death of his sister, while the statements of Parma Nand and Pokhar Dass were recorded on 2-2-1991. Since statements of these witnesses were recorded much later to the death of Lajwanti, therefore, it cannot be said that these witnesses were under shock. The application is lacking in particulars as the complainant had not stated in his application how the witnesses earlier could not give the desired statements. By filing the application, the complainant wants a fresh trial against the accused who are already facing the trial since 1988. In short the defence of the accused before the trial Court was that the prosecution cannot be permitted to fill the lacunae in the case.

4. The learned Magistrate vide impugned order dated 19-10-1996 allowed the application of the complainant and the major reasons given by the learned Magistrate are contained in para No. 2 of the impugned order which are reproduced as follows.

While initiating the arguments on behalf of the State Shri Shakti Singh learned Asstt. Public Prosecutor assisted by Shri R.S. Saini, Advocate vehemently contended that now it is settled law that any witness or any evidence can be led u/s 311 of the Code of Criminal Procedure at any stage of the case, if their examination is essential for just decision of the case. This proposition of law has not been disputed by the learned defence counsel. The learned Asstt. Public Prosecutor vehemently contended that since all the three witnesses namely Har Bhagwan, Pokhar Das and Parma Nand could not depose before this Court as they were under the mental stress due to death of Smt. Lajwanti. Hence, their

examination with regard to the facts of misappropriation of dowry articles is essential. Hence application be allowed. In support of his contention, he has placed reliance on the authority cited as Mohanlal Shamji Soni Vs. Union of India and another, wherein the Hon'ble Supreme Court has held that if any evidence and statement of any witness is essential for just decision of the case the application u/s 311 of the Code of Criminal Procedure should be allowed and even the court is competent to summon and re-examine any witness u/s 311, Cr.P.C. Since re-examination of Har Bhagwan, Pokhar Dass and Parma Nand is essential for the just decision of the case and they could not depose properly at the time of recording of their statement. Hence, the application of the prosecution for re-examination of PWs Har Bhagwan, Pokhar Dass and Parma Nand u/s 311, Cr.P.C. is allowed and case stands adjourned to 18-12-1996 for evidence of the prosecution. They be summoned accordingly.

5. Not satisfied with this order, the accused have come in the present petition u/s 482, Cr.P.C. for the quashment of the proceedings without approaching to the Court of Sessions or to this Court on the revisional side treating this order as an interim one.

6. This Court does not want to enter into this controversy at this stage whether the impugned order dated 19-10-1996 can be challenged in the present proceedings u/s 482, Cr.P.C. or that the petitioners at the first instance should approach to the Court of Sessions or in the High Court for invoking the revisional jurisdiction. The sole point for determination is whether the impugned order of the learned Magistrate can be quashed in the present proceedings.

7. Section 311 of the Code of Criminal Procedure lays down :

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

8. Reading of the above provision would show that this section can be divided into two parts. First part gives impression to the Court to re-examine any person at any stage of the enquiry or the trial, and the second part of the Section passes an obligation upon the Court to re-examine the witness if it appears that it is essential to the just decision of the case. Further interpretation of this section can be that the prosecution is not permitted to fill in the lacunae in the case but if the statement of the witness already examined is lacking on some particulars and by re-examining that witness the better details of the alleged evidence if come to the surface, the justice should not be scuttled or gagged on the platform of mere technicalities of law or procedure. The allegations against the accused are that they had misappropriated the Stridhan of Smt. Lajwanti. In these circumstances the statements of the relation witnesses would be the best

evidence. No doubt that earlier three witnesses including the complainant were examined by the Court. At that point of time if their statements have lacked on some particulars, it does not debar the prosecution or the Court itself to re-examine those witnesses to seek better particulars of the case. The main object of Section 311, Cr.P.C. is to keep the scales of justice in a straight manner and those scales of justice cannot be tilted only in favour of the accused. It is as much the duty of the Court to see that justice must not fail on the platform of technicalities as the matter of procedure is the hand-made law.

9. The learned Sr. Counsel appearing on behalf of the petitioner has relied upon (1982) 1 CLR 547 Narain Singh v. State and submitted that after the defence evidence has been closed it is not permissible for the prosecution to examine the witnesses. This authority is distinguishable on facts. The High Court did not allow the prosecution to fill in the lacunae in the case. In the cited case the report of the Chemical Examiner was not tendered into evidence and it was sought to be tendered after the evidence was closed. We all know that for the clarification of the Chemical Examination that the seized article is an Opium or liquor, no conviction can be based. In the present case the evidence of these witnesses with regard to the items of dowry allegedly entrusted to the accused had already come on the record. By re-examination, the prosecution wanted to bring additional factors for the purpose of elucidation and therefore, the learned Magistrate rightly passed the order for the re-examination of the witnesses.

10. The second authority which has been relied upon by Shri R. S. Cheema, learned Sr. counsel is 1984 (1) RCR 95 Jagdish Chander v. State of Haryana. In the opinion of this Court, this authority rather goes against the petitioners because the position of law has been recognised by the law Courts that Court has a discretion to examine or recall a witness if it is essential for the just decision of the case and order of recalling does not demolish the defence set up by the accused. In the present case, the stand of the accused throughout was that there was no entrustment or misappropriation. By recalling the witness, the accused are not going to be taken by surprise and their defence is not going to be demolished. Rather the accused will get opportunity to cross-examine the witnesses and after re-examination of all the prosecution witnesses their statements would be recorded u/s 313, Cr.P.C. and so much so the defence will further given opportunity to lead the evidence in order to rebut the prosecution case. In this very authority his Lordship was pleased to hold that the second part of the section casts an obligation upon the Court to summon and examine or recall and re-examine any person if his evidence appears to it be essential for the just decision of the case. Just decision of the case has not been defined in the Cr.P.C. This point has to be adjudicated by the trial Court itself. In no circumstance it can be said that the impugned order is an abuse of the process of law or it requires interference in the interest of justice.

11. The learned senior Counsel Shri R.S. Cheema, then brought the attention of this Court to 1985 (2) RCR 176 Jamatraj Kewalji Govani Vs. The State of

Maharashtra, Jamatraj Kewalji Govani v. State of Maharashtra, and submitted that the impugned order is illegal. In the opinion of this Court the citations relied upon by learned Sr. Counsel either go against him or not applicable to the facts in hand. In 1985 (2) RCR 176 (supra) was an authority where the witness did not refer to any document in his earlier statement and thereafter the prosecution wanted to re-examine the witness which was disallowed on the ground that prosecution cannot be allowed to improve its version or repair the lacuna. The authority of the Hon"ble Supreme Court referred to above rather lays down that there is no limitation on the powers of the Court in invoking the provisions of Section 540, Cr.P.C. So long the Court has formulated bona fide opinion in allowing an application this Court cannot invoke the provisions of Section 482, Cr.P.C.

12. The learned Sr. counsel then made an effort to convince this Court that the complaint should be quashed as the accused are suffering a protracted trial and their right of speedy justice has been violated. Though there is no specific prayer made in the petition for the quashment of the proceedings yet this Court would like to deal with the argument which was raised before me by placing reliance on Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, "Common cause" A Registered Society v. Union of India. There is no quarrel about the proposition and guideline given by the Hon"ble Supreme Court in this authority. This Court has also stated that the speedy justice is the right of the accused and it has also been enshrined in our Constitution. However, this has to be seen whether the delay which has occurred in the final disposal of the case can be attributable to the complainant. The various interim orders attached to the present petition do not indicate that the complainant at any stage wanted to delay the proceedings. Once the offence is prima facie committed by an accused in that eventuality it also becomes the duty of the Court to ensure that the culprit must be brought to the book and on mere delay without reference to the intention, the justice should not be scuttled. Nevertheless the rights of the petitioners can be secured by issuing suitable directions to the trial Court to ensure that after recording the additional evidence of the complainant the proceedings should be adjourned in such a manner that the final case shall be disposed of within 6 months from the date of the receipt of the copy of this order.

13. In the final analysis this Court is of the considered opinion that the present petition u/s 482 of the Code of Criminal Procedure has no merit and the same is hereby dismissed and the directions are given to the trial Court to decide the main case within 6 months from the date of the receipt of this order. Special attention be given to the present case and short adjournment be given so that the case may be able to get its finality. No order as costs.