
(2002) 03 RAJ CK 0080

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 178 of 2002

Mahendra Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243(2), 319, 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 2 RLW 849 : (2002) 3 WLN 585

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Pradeep Shah, for the Appellant; D.D. Kalla, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This misc. petition has been filed by the accused petitioners against the order dated 6.2.2002 passed by the learned Additional Sessions Judge No. 2, Hanumangarh in Sessions case No. 41/2000 by which he closed the defence evidence.

2. It arises in the following circumstances:

In respect of FIR No. 221/2000 of the Police Station, Tibi, Distt. Hanumangarh, a challan was filed for offence u/s 302 IPC against the accused petitioner Prithvi Raj. Thereafter the prosecution filed an application u/s 319 Cr.P.C. and that application was accepted and the petitioner No. 1 Mahendra Singh and Petitioner No. 2 Surjeet Singh were further added as accused.

3. At the trial, the evidence of the prosecution as closed and the case was fixed for recording the statement of accused petitioners under Sections 313 Cr.P.C. on 20.1.2001 and on that day, statements u/s 313 Cr.P.C. of the accused petitioners were recorded and the case was filed for recording the defence evidence on 3.10.2001. On 29.9.2001, an application was filed on behalf of the accused

petitioners No. 1 and 2 along with list of 10 defence witnesses.

4. Vide order dated 3.10.2001 that application was accepted and the witnesses No. 1 to 5 mentioned in that list were summoned through bailable warrant of Rs. 500/- and the case was fixed for recording the defence evidence on 22.10.2001. On that day, evidence of no defence witness was recorded and the case was again fixed for recording the defence evidence on 3.11.2001 and on that day, statements of three defence witnesses were recorded. As per the order-sheet dated 3.11.2001, it appears that the counsel for the accused submitted that the witness Harnek Singh would be produced by them and the case was fixed for 9.11.2001 for recording the statements of remaining defence witnesses.

5. On 9.11.2001 no defence witness was produced and the case was fixed for 14.12.2001 and on that day none was present and even P.O. was not present and the defence witnesses were ordered to be summoned. On 5.1.2002, statement of D.W. 4 was recorded and from the order-sheet, it appears that accused petitioners wanted to examine Gurcharan Singh, Liyakat Ali, Purushottam and Mst. Jangir Kaur in defence and these witnesses were ordered to be summoned through bailable warrants in the sum of Rs. 500/- and it was further ordered that they could be produced by accused petitioners themselves and the case was fixed for recording their evidence on 18.1.2002.

6. On 18.1.2002, the defence witnesses were not produced and it was written in the order-sheet that the counsel for the accused persons submitted that they would produce defence witnesses themselves and the case was fixed for recording the evidence on 6.2.2002.

7. From the order-sheet dated 6.2.2002, it appears that no witness in defence was produced and since the witnesses were to be produced by the defence themselves and they were not produced and many opportunities had been given to the defence to produce them, in these circumstances, prayer for summoning the rest defence witnesses was refused and defence evidence was closed.

8. Aggrieved from the order dated 6.2.2002, this misc. petition has been filed and in this misc. petition the main contention of the learned counsel for the accused petitioners is that as per provisions of Clause 2 of Section 234 Cr.P.C., if the accused makes a prayer for summoning the defence witnesses, the Court is bound to summon them and, therefore, the order dated 6.2.2002 whereby the learned trial Judge refused to summon the defence witnesses is without jurisdiction and should be set aside.

9. In my opinion, the argument raised by the learned counsel for the petitioner has to be rejected because of the following reasons:

10. In this case, the prayer that the Court is bound to summon the defence witnesses was accepted by the trial Judge through order dated 3.10.2001 and thereafter only four witnesses were produced by the defence or in other words, only 4 witnesses came in the Court for giving evidence, though other witnesses

were also summoned throughailable warrants. From the order-sheet dated 5.1.2002, it further appears that remaining witnesses were summoned throughailable warrants. From the order-sheet dated 18.1.2002, it further appears that the counsel for the accused persons submitted that the defence witnesses would be produced by them. From the impugned order dated 6.2.2002, it further appears that the witnesses were not produced and since many opportunities were given and one of the accused was in jail and application for summoning the defence witnesses was not filed by the accused who was in jail, but was filed by accused petitioners No. 1 and 2 who were on bail, in these circumstances, the learned trial Judge closed the evidence of defence and further declined to issue fresh summon for calling rest defence witnesses. In these circumstances the impugned order cannot be called/termed to be illegal and against the provisions of law.

11. Proviso to Sub-clause 2 of Section 243 Cr.P.C. further makes it clear that no doubt Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. In the present case, the reasons have been recorded by the learned trial Judge in his impugned order dated 6.2.2002 and prior to that, the prayer was accepted and many opportunities were given and, therefore, the impugned order does not suffer from any basic infirmity and cannot be said to have been passed illegally.

12. The power u/s 482 Cr.P.C. should be exercised by the Court very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice. Since the opportunities were given to the accused petitioners to produce the defence witnesses and they were summoned and four witnesses were produced and their statements were recorded and if when witnesses were to be produced by the accused petitioner themselves and if they were not produced and, in these circumstances, the evidence was closed, no illegality was committed by the learned trial Court. Hence, no interference is called for in the order dated 6.2.2002 and this misc. petition is liable to be dismissed.

For the reasons mentioned above, this misc. petition is dismissed after confirming the order dated 6.2.2002 passed by the learned Addl. Sessions Judge No. 2, Hanumangarh.