
(1998) 05 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 729 of 1997

Market Committee Hodal through its Secretary, Faridabad	APPELLANT
Vs	
Kumar Dall Mills	RESPONDENT

Date of Decision : 18-05-1998

Acts Referred:

Citation : (1998) 4 RCR(Criminal) 131

Hon'ble Judges : Sarojnei Saksena, J

Advocate : Anil Rathee, Advocates for appearing Parties

Judgement

Dr. Sarojnei Saksena, J.

1. Petitioner is aggrieved by the order dated 21.12.1996 whereby following the decision of the Apex Court in Common Cause Registered Society through its Directors v. Union of India and others, 1996(2) RCR(Crl.) 419 : AIR 1996 SC 1619 , the accused is discharged.
2. Petitioner's learned counsel contends that complainant Market Committee, Hodal, District Faridabad through its Secretary lodged a complaint, Annexure P1, under Section 37 of the Punjab Agricultural Market Produce Act, 1961. This complaint was filed on 21.1.1994. JUDGMENT summoning the accused was passed by the learned Magistrate on 8.3.1994 but accused appeared before the trial Magistrate on 18.4.1995. Learned counsel submitted that clause 2(a) of the common cause's case is wrongly invoked by the trial Magistrate in this case as clause 2(a) applied to criminal proceedings regarding traffic offences. He also submitted that since the offence under Section 37 of the Act is punishable with six months, imprisonment with a fine which shall not be less than Rs. 50/ and may extend to Rs. 500/ or with both, the case falls under clause 2(e) of the said judgment of Common Cause's case which provides that cases pending in Criminal courts under IPC or any other law for the time being in force are punishable with imprisonment upto one year with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the Criminal Court shall discharge or acquit the accused, as the

case may be, and close such cases. But in clause 3, the Apex Court has clarified that for the purposes of directions contained in clauses (1) and (2) above, the period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the Court. In this case, the accused appeared in the case on 18.4.1995 and vide impugned order dated 21.12.1996, he is discharged by the trial Magistrate.

3. Despite service of notice, none appeared for the respondents.

4. From the trial Court's order it is evident that respondent accused was served for 11.6.1994. Thereafter case was taken up on different dates as accused could not be served. Petitioner's counsel submitted that accused appeared before the lower court on 18.4.1995 when he was granted bail. Case was adjourned to 12.8.1995. On this date, the Presiding Judge was on casual leave; he took up the case on 9.8.1995 and adjourned it for 15.11.1995. On 15.11.1995 case was again adjourned to 25.1.1996. On this date, the Presiding Officer was on leave. Hence, case was adjourned to 16.2.1996. On 16.2.1996 the case was again adjourned to 15.5.1996 for consideration on notice. On 15.5.1996 again the point under consideration was not considered and the case was adjourned to 21.8.1996 on the ground that the Presiding Officer was to go to Faridabad for evidence. On 21.8.1996, the learned counsel appearing for the accused requested for an adjournment and on his request, case was adjourned to 16.12.1996. On 16.12.1996 also, the learned defence counsel sought adjournment which was granted and the case was finally taken up on 21.12.1996. On 21.12.1996, the impugned order was passed following the Apex Court judgment in Common Cause's case (supra), accused was discharged.

5. In this revision, petitioner has wrongly mentioned that the trial court has discharged the accused holding that his case falls under clause 2(a) as mentioned in Common Causes Case (AIR 1996 SC 1619). From the original order it is evident that the trial Court has passed that order under Clause 2(e) of the said judgment.

In Common Cause's case (AIR 1996 SC 1519) Clause 2 (e) reads as under :

"Where the cases pending in Criminal courts under IPC or any other law for the time being in force are punishable with imprisonment upto one year with or without fine and if such pendency is for more than one year and if in such cases trials have still not commenced the Criminal Court shall discharge or acquit the accused, as the case may be, and close such cases."

In para 3 of this judgment, the Apex Court has held :

"For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of Criminal cases shall be calculated from the date the accused are summoned to appear in the Court.

6. This judgment in Common Cause's case (AIR 1996 SC 1619) was clarified by the Apex Court in Common Cause, a Registered Society through its Director v.

Union of India, AIR 1997 SC 1539. In para II, the phrase pendency of trials used in paragraphs 1 (a) to 1 (c) and the phrase noncommencement of trial as employed in paragraphs from 2(b) to 2(f) of the earlier judgment are clarified. Its sub clause (iii) reads as under :

"In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make."

7. In second judgment of Common Cause's case AIR 1997 SC 1539, it is further clarified :

"The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial. In other words it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clauses of paragraph 2 despite full cooperation by the concerned accused to get these proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the concerned accused nor such delay is caused on account of such accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgment if it is demonstrated that the accused concerned seek to take advantage of their own wrong or any other action of their own resulting in protraction of trials against them."

8. Thus from the chronological history of the case quoted earlier, it is apparent that for four months the trial was delayed by the accused. Accordingly, he is not entitled to take the benefit of the Apex Court judgment in common cause's case (ibid).

9. Resultantly, revision is allowed. The impugned order is set aside. Trial Court is hereby directed to summon the accused again and to decide the case filed by the petitioner in accordance with law.