

(2004) 08 MP CK 0103

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 1833 of 2004

Pooja and Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 01-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 149, 302

Citation : (2004) 2 MPJR 422

Hon'ble Judges : S. Samvatsar, J

Bench : Single Bench

Advocate : B.K. Saxena, with Mr. P. Maheshwari, for the Appellant; Ku. Sudha Shrivastava, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

S. Samvatsar, J.

This petition is filed by the accused persons u/s 482 of the Code of Criminal Procedure (Cr. P.C. for short) for quashing the criminal proceedings i.e. Sessions Trial No.4/2001 pending in the Court of Additional Sessions Judge, Seonda Camp Datia District Datia.

The brief facts of the case are that one Pushpa wife of Jagdish Khangar lodged a "Dehatinalish" stating that Nathuram, Chandan, Ramkali and the applicants have committed murder of her husband Jagdish Khangar. On the basis of First Information Report (F.I.R. for short), a Crime No. 182/2000 was registered at the Police Station Bhandar against all the accused persons for committing offence under Sections 147, 148, 149, 302 of Indian Penal Code (I.P.C. for short). After completion of investigation, a charge sheet was filed against the co-accused Chandan, Ramkali and Nathuram and a separate charge sheet was filed against the present applicants u/s 299 Cr.P.C.

Co-accused Chandan, Ramkali and Nathuram were separately tried earlier by the

Additional Sessions Judge, Seonda in Sessions Trial No.4/2001. In the sessions trial against these accused persons, statements of witnesses i.e. PW-1 Munnalal, PW-2 Raghuraj Singh, PW-3 Head Constable Kamta Prasad, PW-4 Pushpa were recorded. PW-5 Arju and PW-6 Govind Das were the eye witnesses to the said incident. The other witnesses, who were examined were PW-7 Siya, PW-8 Malkhan Singh, PW-9 Dr. D.P. Dandatiya, PW-10 Dr. G.L. Varma and PW-11 Dharmveer Singh. The Sessions Judge after appreciating the evidence acquitted the co-accused Chandan, Ramkali and Nathuram by the judgment dated 25.3.2004. The State did not prefer any appeal against the said judgment and hence the said judgment attained finality between the parties. Thereafter, the present petition was filed by the present applicants stating that as the Sessions Court has acquitted three co-accused persons in the earlier sessions trial no useful purpose will be achieved by prosecuting the applicants on the basis of statements of the same witnesses, as there is no chance of their conviction. Hence, the sessions trial against the present accused should be quashed.

For this purpose, learned counsel for the applicants has relied on the judgment of the Apex Court in case of Prem Lata and Others Vs. State of Punjab, , in which the Apex Court has held that in case where there are no chances of conviction the criminal proceedings should be quashed in exercise of inherent power u/s 482 Cr.P.C, because the Criminal Courts are already over burden and no purpose is achieved by continuing the criminal cases, in which there are no chances of success. The another decision relied on by the learned counsel for the applicants is the judgment of this Court passed in the case of Smt. Akhilesh Vs. State of M.P., MCRC No.690/2003, in which this Court has relied on the judgment of Apex Court in the case of Premlata (supra) and has quashed in similar situation.

After perusing the said judgment, I find that the situation in the case of Premlata (supra) was quite different and not identical in the present case. Though, the Apex Court has laid down that the criminal proceedings should be quashed in case where there is no chances of success. While deciding the case of Smt. Akhilesh (supra), this Court has not taken into consideration the provisions of Section 273, Cr.P.C, which lays down as under:-

Section 273-Evidence to be taken in presence of accused- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

The said section clearly lays down that any evidence taken in the course of trial or other proceeding shall be taken in the presence of the accused. The Rajasthan High Court in the case of Bal Kishan Vs. State of Rajasthan, has laid down that the evidence recorded before appearance of the accused is not admissible in the evidence. Thus, the evidence recorded in earlier sessions trial against three co-accused Nathuram, Chandan and Ramkali is not admissible in the present case and therefore it cannot be read in the present case to give benefit to the present accused persons. Thus, the judgment of this Court in case of Smt. Akhilesh

(supra) is per incuriam.

In such circumstances, I find that this petition is devoid of any merits and deserves to be dismissed. Therefore, the petition is dismissed.