
(2016) 07 JH CK 0142
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 710 of 2015

P.S. Natrajan

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, Section 311

Citation : (2017) 2 AIRJharR 223 : (2017) 1 ECrC 269

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. R.R. Mishra, G.P. II, for the Respondents; Mr. Alok Anand, Advocate, for the Petitioner

Final Decision : Disposed off

Judgement

Mr. Rongon Mukhopadhyay, J. - Heard Mr. Alok Anand, learned counsel for the petitioner and Mr. R.R. Mishra, learned G.P. II for the State.

2. This writ application has been directed against the order dated 03.12.2015 passed by the learned Additional Judicial Commissioner 1st, Ranchi in S. T. No. 257 of 2006 by which the petitioner was afforded a period of 7 days for adducing his oral and documentary evidence, failing which his defence evidence would automatically be closed. Subsequently, the order dated 05.10.2015 had been passed by which the learned trial court had refused to adjudicate the application preferred by the petitioner with respect to Section 15 of the SC & ST (Prevention of Atrocities) Act.

3. In I. A. No. 524 of 2016 which is by way of an amendment application by seeking some more reliefs in the main writ application, the prayers which have been made are for quashing of the order dated 12.01.2016 by which the application of the petitioner filed under Section 311 of Cr.P.C. for recalling the evidence of P.W. 1 had been rejected. A further prayer has been sought to be added which is for quashing of the order dated 22.01.2016 by which rejection

has also been made by the learned trial court with respect to an application filed by the petitioner under Section 294 of Cr.P.C.

4. In view of the order passed by this Court on 02.05.2016 wherein I. A. No. 524 of 2016 was directed to be considered along with the main writ application, the same has also been taken up for hearing. Before advertizing back to I. A. No. 524 of 2016, the impugned orders dated 03.12.2015 and 05.10.2015 are being taken up for consideration.

5. While assailing the order dated 03.12.2015, passed by the learned trial court, Mr. Alok Anand, learned counsel for the petitioner has submitted that the application preferred by the petitioner for adjournment of the trial in order to produce defence evidence had been rejected on the ground that the defence is not interested in concluding the evidence as also the fact that the trial is being monitored by the High Court. Learned counsel submits that none of the said facts are true inasmuch as, there is no order from which it could be ascertained that the High Court is monitoring the trial. Submissions have been advanced that there was a direction given by this Court to conclude the trial expeditiously and preferably within a period of 6 months and that by itself cannot be construed to mean that the High Court is monitoring the trial of this particular case. It has also been submitted that the prosecution took almost 10 years to examine its witnesses whereas within a short span of 3 months, the defence has managed to examine 8 witnesses in spite of the fact that the petitioner is suffering from illness which has affected his locomotion. Learned counsel therefore submits that none of the reasons are tenable in view of the factual aspect and therefore, the learned trial court should not have rejected such application for adducing defence witness and granted only a week's time for adducing evidence on day to day basis. It is thus submitted that the impugned order dated 03.12.2015 deserves to be quashed and set aside.

6. Mr. R.R. Mishra, learned G.P.II supporting the impugned order dated 03.12.2015 submitted that there are clear laches on the part of the petitioner and in fact 2 sets of lawyer filed different applications under Section 311 of Cr.P.C. and in fact when the case was called out, none of the lawyers appeared to pursue the said applications. It has been submitted that the trial is going on for the last 10 years and filing of such applications is by way of dilatory tactics adopted by the petitioner.

7. It appears that a writ application was preferred by the petitioner being W.P. (Cr.) No. 229 of 2014 in which submission has been advanced that the production of the defence witness before the learned trial court is very slow wherein this Court in its order dated 11.09.2015 has not prescribed any specific time for adducing defence witness, but liberty was given to the learned trial court to proceed further and be cautious while granting adjournments for adducing defence witness. This order dated 11.09.2015 was passed after this Court passed an order dated 14.11.2014. Moreover, W.P.(Cr.) No. 229 of 2014 was an altogether different issue and thus it cannot be said that pendency of W.P.(Cr.)

No. 229 of 2014 would mean that the High Court is monitoring the trial. It further appears that the prosecution has almost taken 10 years to examine its witnesses. The defence as it appears had produced 8 witnesses till date and as has been stated by Mr. Alok Anand, learned counsel for the petitioner that 8 to 10 witnesses are further required to be produced for their examination. Although, the trial is pending since 2006, but appropriate and reasonable opportunity had also to be given to the defence to adduce its defence witnesses. The learned trial court on the pretext that the High Court is monitoring the trial, has granted only a week's time to produce the witnesses. In order to come to a just decision in the case and since the defence has already produced 8 witnesses, it would be in the interest of justice that the time granted to the defence to produce its witnesses be extended to a reasonable time. In such view of the matter, the prayer made by the petitioner for adjournment of the case which is the subject-matter of the impugned order dated 03.12.2015 is modified by granting 4 weeks' time to the defence to produce its evidence both oral and documentary. The period of 4 weeks as has been granted shall be from the date, a copy of the order is produced before the trial court.

8. The learned trial court shall ensure that the trial is held on a day to day basis and there shall be no further opportunity to the defence to produce its witnesses or to mark document as exhibit after the expiry of the period of 4 weeks as has been indicated in this order.

9. The next limb of argument of the learned counsel for the petitioner is with respect to the challenge which has been made to the order dated 05.10.2015 in which an objection was raised that the trial was not conducted by the Special Public Prosecutor as has been mandated under Section 15 of the SC & ST (Prevention of Atrocities) Act. It has been submitted by the learned counsel for the petitioner that initially the case was conducted by Sri B.N. Sharma who was a public prosecutor and who superannuated from service on 30.09.2015. It has been submitted that subsequently notification was issued by the government in which it has been submitted that one Sri Manoranjan Nath Sinha is appointed prior to the superannuation of Sri B.N. Sharma as Special Public Prosecutor by the Government vide notification dated 22.07.2013. It has been submitted that the said notification dated 22.07.2013 was not in terms of the provisions of Section 15 of the SC & ST (Prevention of Atrocities) Act, as it was not followed by a gazette notification as is the mandatory requirement under the law. Learned counsel submits that subsequently however by virtue of a gazette notification, one Mr. Sanjeev Kumar Sinha who is Incharge, Public Prosecutor has been appointed as a Special Public Prosecutor for the case. It has been submitted that since the basic principles of law as well as the procedure as indicated has never been followed by the prosecution while conducting the trial through a regular Public Prosecutor and not a Special Public Prosecutor as is the requirement under the law, as such the impugned order dated 05.10.2015 deserves to be quashed and set aside. Learned counsel in support of his contention has referred to the judgment of Hon'ble Supreme Court in the case of "Municipal Corporation of

10. At this, Mr. R.R. Mishra, learned G.P. II has submitted that the subsequent notification appointing Sri Sanjeev Kumar Sinha as Special Public Prosecutor had also cancelled the earlier notification dated 22.07.2013 by which Manoranjan Nath Sinha has been appointed as a Special Public Prosecutor. Learned counsel submits that the petitioner has raised such issue at the fag end of the trial which itself shows the intention of the petitioner to delay the disposal of the case. It has also been submitted that the trial shall not vitiate only because of the fact that the same had been conducted by a regular Public Prosecutor and not a Special Public Prosecutor as a Special Public Prosecutor prior to 22.07.2013 was never appointed by the State Government. It has been submitted that the defence has never been prejudiced by the trial being conducted by the regular Public Prosecutor and therefore the petitioner cannot raise this issue at this stage when the same was already available to him in the earlier stage of the trial. In support of his contention, learned State counsel has referred to the judgment in the case of "Gulzar Khan v. State of Karnataka and another" reported in 2001 Cr.L.J. 3586.

11. It is an admitted fact that the first notification which was issued by the Government appointing Sri Manoranjan Nath Sinha as Special Public Prosecutor was on 22.07.2013 which however was subsequently cancelled by virtue of another notification in which Mr. Sanjeev Kumar Sinha was appointed as Special Public Prosecutor and who is conducting the trial at the present moment. The trial already started in the year 2006, and at no point of time any grievance was made by the petitioner with respect to the prosecution being conducted not by a Special Public Prosecutor, but a regular Public Prosecutor. In the case of "Municipal Corporation of Greater Mumbai" (supra), reliance has been made on the decision of the Privy Council in the case of "Nazir Ahmad v. The King-Emperor" reported in AIR 1936 (PC) 253, wherein it was held that if a manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.

12. Mr. R.R. Mishra, learned G.P. II who has placed reliance on the judgment in the case of ""Gulzar Khan" (supra) has referred to paragraph 14 of the said judgment wherein it has been held that if any person is aggrieved by not appointing of Special Public Prosecutor, the same can only be the complainant, but not the accused persons. Nothing has been pointed out to suggest as to under what manner the defence has been prejudiced by the trial being conducted by the regular Public Prosecutor. The case was being conducted by the regular Public Prosecutor since the beginning as the government had not come out with a notification made under Section 15 of the SC & ST (Prevention of Atrocities) Act for appointing a Special Public Prosecutor prior to 22.07.2013. The petitioner cannot feign ignorance that he was not aware of the provision that the Public Prosecutor has not been appointed in terms of Section 15 of the SC & ST (Prevention of Atrocities) Act as a Special Public Prosecutor. The application

therefore seems to have been preferred by the petitioner for delaying the conclusion of the trial. In such view of the matter, the impugned order dated 05.10.2015 does not contain any illegality or error so as to cause interference by this Court and accordingly the said order is hereby affirmed.

13. In the I. A. No. 524 of 2016, the first order which is sought to be challenged by the petitioner is the order dated 12.01.2016 by which the application preferred by the petitioner for recalling the evidence of P.W. 1 for her examination was rejected. The other prayer which has been made by the petitioner in the instant interlocutory application is with respect to the order dated 12.01.2016 by which the application preferred by the petitioner under Section 294 of I.P.C. had been rejected.

14. The amendment which has been sought for by the petitioner is interconnected and intertwined with the main prayer made in the instant application and accordingly the same is allowed.

15. I. A. No. 524 of 2016 is disposed of.

16. The amendment application shall form part of the main application.

17. Since the entire matter has been heard extensively as such, the amendments which have been allowed are also being decided herein below.

18. Mr. Alok Anand, learned counsel for the petitioner while assailing the order dated 12.01.2016 has submitted that it would be necessary to recall and examine P.W. 1, as much water has flown after her examination, almost a decade back. It has been submitted that the informant ? P.W. 1 has given contradictory statements at various points of time and at various places in which cases have been instituted by her. Learned counsel for the petitioner has also submitted that with respect to examination of the police official who was Incharge of the investigation into the present case had also been implicated by the informant, but subsequently she had purportedly resiled from her statement and the said police official was acquitted from the criminal case instituted against him. It has therefore been submitted that since the said developments were subsequent to the examination of P.W. 1, it is necessary to recall and examine her on the said points. Learned counsel further submits that these facts have not been properly appreciated by the learned trial court by refusing the application under Section 311 of Cr.P.C.

19. Mr. R.R. Mishra, learned G.P. II has submitted that the P.W. 1 was examined and cross-examined intensively by the prosecution as well as by the defence and when the case was at its final stage wherein only final arguments are to be heard, such applications have been preferred by the petitioner which along with other applications so filed are only to delay the disposal of the trial.

20. It appears from the impugned order dated 12.01.2016 that P.W. 1 ? Shushma Badaik was examined on 12.09.2006 and she was cross-examined on behalf of the defence at length. The prosecution evidence as it seems was closed

on 21.08.2015 after which the statement of the accused was recorded under Section 313 of Cr.P.C. on 04.09.2015 and the defence evidence was closed on 14.12.2015. It thus appears that only at the fag end of the trial only to delay the disposal of the case such applications have been filed. Nothing concrete could have been put forward by the petitioner which could lead to reconsideration or allowing the application preferred by the petitioner under Section 311 of Cr.P.C. The evidence of the P.W. 1 was already brought on record in I. A. No. 524 of 2016 from which it appears that the P.W. 1 was examined and cross-examined by the defence extensively. Moreover, after the cross-examination of P.W. 1 on 31.01.2007, the application under Section 311 of Cr.P.C. had been filed on 21.12.2015 when the defence evidence was also closed on 14.12.2015. In absence of any plausible reasons for recall and examination of P.W. 1, the learned trial court was perfectly justified in refusing to entertain such application and therefore, the impugned order dated 12.01.2016 does not necessitate any interference by this Court.

21. The petitioner has also made a challenge to the order dated 22.01.2016 in which the application preferred by the petitioner under Section 294 of Cr.P.C. for not appointing Special Public Prosecutor at the time of trial, the genuineness of the documents filed by the prosecution had been rejected. Mr. Alok Anand, learned counsel for the petitioner has submitted that it is absolutely necessary to bring on record the notification vide Memo No. 3106 dated 22.07.2013 in which Sri Manoranjan Nath Sinha was appointed as Special Public Prosecutor to conduct the cases under the provisions of Section 15 of the SC & ST (Prevention of Atrocities) Act. It has been submitted that the said notification is a public document and therefore, the same may be brought on record. He has also referred to Section 78 of the Evidence Act to drive home his submission so made.

22. Mr. R.R. Mishra, learned G.P. II has opposed the prayer made by the petitioner and has submitted that since the government in the subsequent notification cancelled the earlier notification dated 22.07.2013, there is no necessity of bringing the said evidence on record or to exhibit the said document as nothing fruitful would happen in allowing the application under Section 294 of Cr.P.C.

23. It appears that subsequent notification of the government dated 29.12.2015 had apart from appointing Mr. Sanjeev Kumar Sinha as a Special Public Prosecutor under Section 15 of the SC & ST (Prevention of Atrocities) Act also cancelled/rescinded the earlier notification vide Memo No. 3106 dated 22.07.2013. In such circumstances therefore, the notification contained in Memo No. 3106 dated 22.07.2013 loses significance and the learned trial court had rightly refused the application preferred by the petitioner under Section 294 of Cr.P.C. There has been no illegality or error committed in the order dated 22.01.2016, and the same is also affirmed by this Court.

24. Consequent to the discussions made herein above, the impugned orders dated 05.10.2015, 12.01.2016 and 22.01.2016 is hereby affirmed. So far as the

order dated 03.12.2015 is concerned, the observations has already been made in the earlier part of the order.

25. Accordingly, this application is disposed of.