
(1998) 03 J&K CK 0025
In the Jammu And Kashmir High Court
Case No : Criminal Revision No. 96 Of 1997

Puran Chand and Others

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Evidence Act, 1872 — Section 165
Jammu and Kashmir Criminal Procedure Code, 1989 — Section 540
Ranbir Penal Code, 1989 — Section 147, 148, 325, 34

Citation : (1998) CriLJ 3062

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : C.M. Gupta, for the Appellant; Shaista Hakeem, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—This revision is directed against the judgment dated 17-7-1997 passed by 1st Additional Sessions Judge, Jammu.

By means of impugned judgment, while dismissing the revision petition of respondent-State, learned Judge has made certain observations which

according to the petitioners, should not have been made and thus present revision by them questioning only that part of the judgment impugned.

2. In order to properly understand the controversy in this case brief facts need to be noticed :

Petitioners are being prosecuted in the Court of City Judge, Judicial Magistrate First Class, Jammu, for having allegedly committed offences under

Sections 147, 148, 325/34 Ranbir Penal Code. Admittedly, Charge in this case was framed by the trial Court on 12-8-1992 and since the

petitioners did not plead guilty to the charge and claimed trial, therefore, the

proceedings for their trial commenced. It seems that after the framing of the charge, proceedings are going on and, as made out from the submission of learned Counsel for the parties, three witnesses remained to be examined viz. Dr. Malvinder Singh, Dr. Abdul Rashid and the Investigating Officer of the case.

3. As per Annexures as far back as on 9-11-1995 evidence of the prosecution was closed by order of the trial Court since neither any witness was present on that date nor any cause was made out for adjourning the case. Parties are not at variance that revision was preferred against this order and the matter came up before 2nd Additional Sessions Judge Jammu, who by means of order dated 12-12-1996 dismissed the revision of the State, thereby upheld the order of closure of evidence passed by the Court below.

4. It appears that respondent-State made another attempt by having recourse to Section 540 Criminal Procedure Code, wherein amongst other things it was pleaded that since eye witnesses during the course of trial have deposed against the petitioners, as such statements of the abovenamed three witnesses were necessary to be recorded and thus those be summoned for just decision of the case. This application was also turned down. by the trial Court and in the opinion of this Court, rightly.

Against the order passed by the trial Court on 22-4-1997, rejecting the application of the State, a revision before the Court below was preferred and by means of impugned judgment, revisional Court below, while dismissing the revision petition, has observed as under :

...The revision petition of the petitioner, therefore, merits dismissal.

10. For the reason stated above the revision petition is dismissed with the observation that despite (despite) the rejection of the application of the prosecution of the trial Court shall be at liberty to consider the question of necessity of recording of the evidence of the prosecution witnesses whose evidence stand closed on its own and if it finds that their evidence is necessary it may proceed for recording their statements by invoking the powers vested in it u/s 540 Cr.P.C. The petition is accordingly disposed of.

Petitioners are aggrieved by the observations in paragraph 10 reproduced above of the revisional Court below starting with the words with the observation' till the end of the said paragraph.

5. So far power u/s 540 Criminal Procedure Code is concerned there can hardly be any dispute in that behalf. Wide powers are conferred upon a

Court and section can be termed to be there in two parts. First part of the said section gives a discretion whereas in the second part there is a

mandate to the Court to summon and examine or recall and reexamine any such person if his evidence appears to it essential for the just decision of

the case. Section 540 Criminal Procedure Code may be referred which is to the following effect:-

540. Power to summon material witness, or examine person present. 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 reexamine any

person already examined, and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it essential

to the just decision of the case.

A perusal of this Section further indicates that the power of the Court to summon a material witness or recall, reexamine as well as to examine a

person is absolute in terms but still the fact remains that such a power has to be exercised on sound judicial discretion so far first part of the section

is concerned. However, when the Court comes to the conclusion that evidence of a person is essentially required for the just decision of the case it

does not limit the power to summon him in the interest of an accused alone but such power can be exercised for the benefit of prosecution also.

For exercise of such power, care has to be taken by the Court concerned. Prayer for examination of further/ additional evidence cannot be made

in order to rebut the defence evidence as well as to fill in the lacuna or as gap left in its evidence by one of the parties. (See : *Jamatraj Kewalji*

Govani Vs. The State of Maharashtra, .

It is an admitted case of the respondent-State that its evidence was closed as far back as in 1995, revision against the said order was dismissed as

is evident from Annexures A & B. what was the change of circumstances and/or new ground that came into existence for filing of subsequent

application out of which the present revision has arisen ?

6. The only ground urged by learned Government Advocate was that even if the order of dismissal is upheld and observations made in paragraph

10, against which the petitioners are aggrieved, are ordered to be deleted, still the trial Court is not divested of its powers to summon any witness

and/or to recall and reexamine as well as to examine a person to appear in a Court, when the Court is of the opinion that such examination is

necessary for just decision of the case. This argument, when examined in the background of this case, does not appear to hold the ground, though

on first impression it appears to be not only impressive but attractive too.

7. In the instant case in the background thereof, this Court has no doubt that right from 9-11-1995, the respondent-State is dilly-dallying with the

case. What it could not achieve in the first instance was attempted by filing the application u/s 540 Criminal Procedure Code. In case the Court

had considered just and proper to examine the three witnesses named in this judgment, then it would have exercised the discretion even on 9-11-

1995, when Annexure A was passed, which was later on upheld by the revisional Court. Even at that stage the Court could be appraised and

could have been requested by the prosecution to have exercised the discretion vested in it u/s 540 Criminal Procedure Code. This is not a case

where the prosecution later on came to know of some witness whose examination was necessary for just decision of the case and/or the petitioners

having suddenly brought some material springing a surprise to the prosecution.

8. It further hardly needs to be emphasized that while administering criminal justice it has also to be ensured that neither of the parties is allowed to

make the proceedings as a diving board as is being done by the prosecution State in the present case. Power to put any questions cannot only be

exercised u/s 540 Criminal Procedure Code but it is there u/s 165 of the Evidence Act also. The material circumstance that needs to be examined

is whether a case exists for exercise of such a discretion or not. When the entire prosecution case is examined in the peculiar background as well

as admitted facts, in the considered opinion of this Court, no case is made out for exercise of its discretion by the trial Court within the ambit of

Section 540 Criminal Procedure Code and further revisional Court below was not justified in making the observations in paragraph 10 of the

Judgment impugned referred hereinabove.

9. As a result of the aforesaid discussion, the present revision petition deserves to be allowed and consequently the observations made in

paragraph 10 of the judgment impugned passed by the Court below, which are to the following effect shall stand deleted :-

...with the observation that despite (despite) the rejection of the application of the prosecution of the trial Court shall be at liberty to consider the

question of necessity of recording of the evidence stand closed on its own and if it finds (finds) that their evidence is necessary it may proceed for

recording their statements by invoking the powers vested in it u/s 540 Criminal Procedure Code.

Since the matter is hanging fire for long, trial Court is ordered to dispose of the matter expeditiously.

10. Revision petition stands disposed of, along with connected Cr. M.P. No. 266/97. Interim order passed on shall stand vacated. Parties are

directed to appear in the Court below on 23-3-1998. Registry will ensure that a copy of this order is sent to the Court below for compliance.