
(2011) 01 JH CK 0106
In the Jharkhand High Court
Case No : Cr.M.P. No. 1453 of 2010

Rajendra Mandal, Parmanand Mandal and Hari Mandal	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 311, 313, 482
Penal Code, 1860 (IPC) — Section 307, 326, 34, 341, 379

Citation : (2011) 8 RCR(Criminal) 773

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 28.8.2010 by which the learned Additional Sessions Judge, Deoghar allowed the petition filed on behalf of the prosecution u/s 311 Code of Criminal Procedure in Sessions Case No. 103/07.

2. It would be relevant to mention that the learned Additional Sessions Judge, Deoghar by the order dated 19.4.2007 had framed the charges against the accused Petitioners Rajendra Mandal and Parmanand Mandal for the alleged offence under Sections 448, 341, 326, 379, 387, 307/34 of the Indian Penal Code, whereas against the accused Petitioner No. 3 Hari Mandal, charges were framed under Sections 307/34, 448, 341 and 379 of the Indian Penal Code separately on 3.7.2007.

3. Learned Counsel appearing for the Petitioners submitted that after framing of charge since no witness could be produced and examined on behalf of the prosecution for several years during 2007-2010, the trial court closed the evidence of the prosecution and examined the accused Petitioners whose statements were recorded u/s 313 of the Code of Criminal Procedure on

5.7.2010. After examination of the accused u/s 313 of the Code of Criminal Procedure the prosecution then filed a petition u/s 311 of the Code of Criminal Procedure seeking an opportunity to produce and examine the prosecution evidence for the ends of justice by taking the plea that no notice could be served upon the witnesses through the process of the court to which, the learned Counsel submitted that it was absolutely a misleading statement of the prosecution and was totally misconceived.

4. The learned Counsel pointed out that summons and non-bailable warrant of arrest were issued against the prosecution witnesses. Besides, the Superintendent of Police was also requested to exercise his good offices for procuring the attendance of the witnesses in the witness box and reminder was also sent to him in this regard. But in spite of all efforts of the court, no witness could be produced during the period 2007-2010. As a matter of fact, the prosecution failed to make out any cogent and acceptable explanation for non-production of the witnesses during trial. It was known to the witnesses, some of whom were accused in the counter case, that the trial of the Petitioners was going on in which they were required by prosecution to adduce evidence but never cared to appear in spite of the service of notice upon them. Counter case instituted at the instance of the present Petitioners was pending before the same trial court and the witnesses were aware of the day to day development but never chose to appear.

5. The counsel further submitted that the trial court without assigning any cogent reason allowed the application of the prosecution u/s 311 of the Code of Criminal Procedure which caused prejudice to the accused Petitioners. Laches on the part of the prosecution cannot be removed and the trial of the accused-Petitioners cannot be continued on the fancy of the prosecution, the learned Counsel added. The Petitioners herein have made additional prayer that their entire criminal prosecution may be quashed by this Court in view of the above facts and circumstances of the case.

6. By filing a supplementary affidavit the Petitioners have contended that they had instituted a counter case against the informant of the instant case Pramod Mandal being Mohanpur P.S. Case No. 190/06, in which charge sheet was submitted against the informant and other accused for the alleged offence under Sections 147, 148, 341 and 323 of the Indian Penal Code. Since the case and counter case were going on between the same parties before the same trial court and the informant of the instant case was regularly in attendance before the trial court as an accused in that case, he neither on his own motion volunteered to adduce evidence nor the prosecution asked him for adducing evidence in the instant case and therefore there was neither cause nor sufficient grounds for allowing the petition of the prosecution u/s 311 of the Code of Criminal Procedure.

7. Heard Mr. Md. Hatim, the learned A.P.P. for the State-Opposite Party.

8. Having regard to the facts and circumstances of the case, I find that no witness could be produced on behalf of the prosecution during the period 2007-2010 and for that no adequate explanation could be given by the prosecution for non-production of the witnesses in spite of the processes issued to them by the court. However, the prosecution preferred to file a petition u/s 311 Code of Criminal Procedure only after recording the statement of the accused u/s 313 Code of Criminal Procedure.

9. Section 311 of the Code of Criminal Procedure deals with power to summon material witness, or examine person present, which speaks,

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 re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

10. The language of Section 311 of the Code of Criminal Procedure clarifies that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. However, what the Court was required to do was to exercise its discretion properly and judiciously for the ends of substantial justice. It was held by the Bombay High Court that such discretion was very wide conferred on the Court, to act as the exigencies of justice require 2002 CriLJ 794 (Bom).

11. Admittedly, there was case and counter-case between the parties and members of both the parties had sustained injuries, therefore, exigencies required for the just decisions of the cases pending before the same court to consider and allow the prosecution in the instant case to adduce evidence though the prosecution failed to avail such opportunity within a span of about four years. Article 21 of the Constitution of India guarantees speedy trial of the accused but at the same time requirement of substantial justice cannot be ignored. In that view of the matter, I find that the impugned order was drawn allowing the prosecution witnesses to adduce evidence for the ends of substantial justice. The learned Counsel appearing on behalf of the Petitioners failed to show and convince me so as to call for interference in the impugned order. The petition is devoid of merit hence it is rejected, however, with the direction to the trial court to complete the entire exercise of evidence within two months of the receipt of this order.