
(2011) 04 JH CK 0184

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5185 of 2009

Rashmi Kumari

APPELLANT

Vs

Tapas Kumar Roy

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 04 JH CK 0184

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—When the matter is called out, learned Counsel for the Petitioner is absent. Neither the matter is mentioned nor did anybody appear on behalf of the Petitioner.

2. Looking to the facts and circumstances of the case and also looking to the impugned order passed by the trial court dated 1st July, 2009 in T.M.S. No. 552 of 2007, I see no reason to entertain this writ petition mainly for the following facts and reasons:

(i) Certain documents like Complaint Case No. 444 of 1998 have been given Exhibit No. 1. Similarly, other applications, which are filed in Complaint Case, are given Exhibit Nos. 2 and 3 and the G.R. Case No. 732 of 2005 has given Exhibit No. 4. Being aggrieved by grant of exhibit numbers, the present petition has been preferred by the present Petitioner.

(ii) It has been held by the Hon'ble Supreme Court in the case of Bipin Shantilal Panchal v. State of Gujarat and Anr. as reported in 2001 (3) SCC 1, especially in paragraph No. 13 and 14, which read as under:-

13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the

fallout of the above practice is that: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

(Emphasis Supplied)

(iii) In view of the aforesaid observation and the method propounded by the Hon"ble Supreme Court, no error has been committed by the trial court in granting exhibit numbers to the documents, which are referred in the impugned order.

(iv) The objections, which are raised by the Petitioner will be considered at the time of final hearing of T.M.S. No. 552 of 2007.

3. In view of the aforesaid facts, there is no substance in this writ petition and, hence, the same is, hereby, dismissed.