

(2006) 01 JH CK 0014
In the Jharkhand High Court
Case No : Criminal Revision No. 19 of 2005

Ravi Bhushan Dubey and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 284, 311
Penal Code, 1860 (IPC) — Section 323, 324

Citation : (2006) CriLJ 2507 : (2006) 4 RCR(Criminal) 428 : (2006) 2 JLJR 625 :
(2006) 2 JCR 22 : (2006) 41 AllIndCaS 940 : (2006) 2 AIRJharR 25

Hon'ble Judges : N. Dhinakar, C.J

Bench : Single Bench

Advocate : G.K. Sinha and A. Shrivastava, for the Appellant; APP, for the Respondent

Judgement

N. Dhinakar, C.J.—A petition was filed by the prosecution u/s 311, Cr PC before the Judicial Magistrate, 1st Class, Garhwa for the purpose of examining the two witnesses, namely the informant and his wife who allegedly suffered injuries in the case. The trial Magistrate dismissed the petition and aggrieved by the said order the State preferred a revision and the Addl. Sessions Judge, Fast Track Court No. III, Garhwa allowed the revision holding that the learned Magistrate passed the order in haste. Accordingly, permission was granted by the Addl. Sessions Judge to the prosecution to examine two witnesses and aggrieved by the said order of the learned Sessions Judge, the present revision is filed by the accused, Ravi Bhushan Dubey and Pankaj Dubey in the case.

2. Learned counsel appearing for the petitioners submits that the prosecution having failed to produce two witnesses in-spite of several opportunities given to it was not justified in filing a petition u/s 311, Cr PC to examine those two witnesses after the prosecution case was closed and therefore, the Sessions Judge was not right in allowing the petition filed to summon two witnesses for their examination.

3. I have heard Sri I.N. Gupta, learned APP appearing for the State and perused the materials placed before me.

4. At the outset, I may have to say that the Sessions Judge was not justified in allowing the petition filed by the prosecution u/s 311, Cr PC for summoning two witnesses. It could be seen that the occurrence had taken place in the year 1998. The final report was filed before the learned Magistrate and taken on file and numbered as G.R. Case No. 697/1998. The charges were framed against the petitioner under Sections 323 and 324 of the IPC on 18.12.1999. After the framing of the charges two witnesses, namely, Dinesh Kumar Dubey and Santu Dubey were examined as PWs 1 and 2 on 5.12.2000 and 7.3.2001 respectively. Thereafter the prosecution went into slumber and did not produce any witness. The case was pending before the learned Magistrate on 7.3.2001 for the examination of the other witnesses. On 12.6.2001 summons were issued at the request of the prosecution and accordingly, summons were sent. The hearing date was fixed as 6.2.2001. On that day the witnesses were not produced by the prosecution and therefore, the case stood adjourned from time to time. As the prosecution witnesses were not produced by the prosecution on summons being issued by the Court, the trial Court issued bailable warrant and thereafter non-bailable warrant but to no success. Finally as a last chance the prosecution was directed to produce witnesses on 20.3.2003 but the prosecution did not produce any witness even on that date. The learned Magistrate thereafter closed the prosecution case on 17.4.2003. After the closure of the prosecution on 17.4.2003 the prosecution came out with a petition u/s 311, Cr PC on 25.3.2003 praying that two witnesses have to be examined which was rejected and in revision it was reversed by the Sessions Court.

5. The facts narrated and the dates given above show that the prosecution in spite of several opportunities given to it did not produce the witnesses and allowed the case to hang before the learned Magistrate from the year 1998 till 2003. The prosecution came out with an explanation for non-examining the above two witnesses by stating that they were old and suffering from illness. I am unable to understand as to how the persons who were old in the year 1998 could have become younger in the year 2003 for them to be summoned and examined as witnesses in the case at a later point of time. It is also difficult to accept the explanation given by the prosecution that the two witnesses were ill, since, if the two witnesses were actually ill and that they could not have been produced before the Court either on summon or on the basis of non-bailable warrant, the prosecution only ought to have not only informed the Court of such illness of the two witnesses but also should have filed a petition u/s 284, Cr PC. Section 284, Cr PC contemplates that whenever, in the course of any inquiry, trial or other proceeding under this Code, if it appears to a Court or Magistrate that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured under the circumstances of the case, the Court or the Magistrate may dispense with such attendance and may issue a commission for the examination of the witness in accordance with the

provisions of Chapter XXIII. It is an admitted fact that the prosecution did not inform the Magistrate when the witnesses were not produced that they are ill and therefore, they could not be produced. It is also an admitted fact that the prosecution did not file any petition u/s 284, Cr PC for examining those two witnesses on commission on the ground that those two witnesses cannot be produced before the Court on account of illness. It is, therefore, clear that the prosecution having failed to give proper explanation for the non-production of the two witnesses cannot at a later stage, come out with a petition u/s 311, Cr PC to examine those witnesses after the prosecution evidence was closed. In my view the protracted proceeding had caused grave prejudice to the petitioners who had to face charges u/s 323 and 324, IPC and had to attend the Court from the year 1998 till 2003 i.e. for a period of five years. In view of the above, I am of the view that the Sessions Court ought not to have allowed the petition filed by the prosecution to examine two witnesses since allowing of such petition at a belated stage will only result in grave miscarriage of justice to the affected parties.

6. I, therefore, allow the revision and set aside the order of the Sessions Court dated 2.11.2004 passed in Cr Revision No. 10 of 2004. The order of the learned Magistrate is restored and the learned Magistrate is directed to dispose of the case pending on his file on the basis of the evidence available on record after giving opportunity to the accused-petitioners to examine witnesses on their side, if they choose to do so. The learned Magistrate is further directed to dispose of the case as expeditiously as possible and in any event within 30 days from the date of receipt of a copy of this order. The petitioners will appear before the learned Magistrate on 23.1.2006 and will cooperate with the Magistrate for the early disposal of the case.

7. The Registry is directed to send a copy of this order to the learned Judicial Magistrate, 1st Class; Garhwa so that he could receive the same by 20.1.2006.