

(2005) 01 CAL CK 0019
In the Calcutta High Court
Case No : C.R.R. No. 1879 of 2004

Sekhar Saha

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 91, 91(1)

Citation : (2005) 3 CHN 184

Hon'ble Judges : Amit Talukdar, J

Bench : Single Bench

Advocate : Subir Banerjee and Jayanta Banerjee, for the Appellant; Swapan Kr. Mallick, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—This application is directed against the order dated 14.6.04 passed by the learned Additional Sessions Judge, Fast Track 2nd Court, Siliguri in Sessions case No. 46(5)99. The learned Judge by the impugned order refused the prayer of the petitioner for recalling the Investigating Officer (P.W. 18) and for production of the G.D. Entry, in question.

2. This has made the petitioner to move this Court against the same.

3. Shri Subir Banerjee, learned Counsel appearing in support of the application being assisted by Shri Jayanta Banerjee submitted that the order passed by the learned Fast Track Court requires to be set aside in view of the fact that a valuable right of the defence has been curbed by the Court in refusing on the first instance to allow the prayer for recalling P.W. 18 (Investigating Officer) and on the second instance the prayer for production of General Diary.

4. Shri Banerjee has submitted that the General Diary Entry in question which has been sought to be brought before the Court at the behest of the defence was very much relevant for the purpose of cross-examining the Investigating Officer (P.W.18) and unless the said prayer was allowed the defence would suffer serious

prejudice. He further submitted that the General Diary was necessary to be produced in Court for rebutting the prosecution case in respect of the charge framed.

5. Shri Banerjee placed the certified copy of the evidence of P.W.18 and stressed that the learned Fast Track Court adopted an erroneous approach in refusing to grant the prayer of the petitioner. He further submitted that the petition dated 24.6.2004 filed on behalf of the defence for recalling the Investigating Officer (P.W.18) and producing the General Diary was not correctly considered by the learned Fast Track Court and it came to an erroneous finding.

6. Shri Mallick for the State seriously opposed the submissions of Shri Banerjee. He submitted that the General Diary was not at all necessary to be produced as already the defence has effectively cross-examined the Investigating Officer (P.W.18). Shri Mallick supported the impugned order and argued that in the event the defence was so included for production of the General Diary it could have prayed for direction u/s 91 of the Code of Criminal Procedure (for short the said Code) for production of the same; but certainly not at the stage when already P.W.18 has been cross-examined and discharged.

7. It was the further case of Shri Mallick that, when defence has been entered upon after the conclusion of the prosecution case they can very well ask for production of the General Diary and the learned Fast Track Court has done nothing wrong in refusing such prayer.

8. Further Shri Mallick submitted that P.W.18 in the event is allowed is to be recalled it will only delay the trial as the defence already had sufficient opportunity to cross-examine the said witness. Shri Mallick has prayed for dismissal of the revisional application with direction for expeditious conclusion of the trial.

9. Having heard the aforesaid submissions and considering the materials this Court is of the view that the approach of the learned Fast Track Court in refusing the prayer of the petitioner for recalling the Investigating Officer (P.W.18) is not sustainable. From the Order No. 56 dated 14.6.04 it is clear that at least on 56 occasions the trial had survived. On the day when the impugned order was passed P.W.18 was being very much cross-examined and before close of the same the defence filed the petition for further cross-examination on the point of production of General Diary and prayed for deferring the same. But, however, the same was refused by the learned Fast Track Court. This Court is of the considered opinion that such prayer ought to have been allowed as the defence should have every possible opportunity to have his say in a trial and just an adjournment when already the trial has lived for 56 occasions, opportunity to cross-examine a particular witness cannot tantamount to "dragging the case unnecessarily", as found by the learned Fast Track Court.

The finding of the learned Fast Track Court:

"Defence has got sufficient opportunity to cross-examine I/O. So, I am not inclined to give defence further chance to cross-examine I/O only on above-mentioned points. So, evidence of I/O and her cross-examination is closed at this stage. Learned APP-in-charge closed prosecution witnesses. So fix 29.6.04 for examination of accused u/s 313. Cr. PC."

cannot be appreciated by this Court. The trial, as noticed, has already lingered since 1999. As such another opportunity would not have been fatal. P.W.18 was examined on 31.5.04 and her cross-examination was resumed on 14.6.04. As such, this Court fails to understand the logic which persuaded the learned Fast Track Court to form such an opinion that another opportunity to cross-examine P.W.18 would tend to drag the matter unnecessarily. This Court cannot reconcile with the stand taken by the learned Fast Track Court.

10. Now, with regard to the production of the General Diary, which has been prayed for production by the defence before the Court, for whatever may be its worth. This Court feels that it will always be open for the defence to resort to Sub-section (1) of Section 91 of the said Code and in the event, the defence makes any such prayer. At the appropriate stage it would be incumbent upon the learned Fast Track Court to allow the same for production of the General Diary, as earlier prayed for in the present situation of the case.

11. Accordingly, the revisional application stands allowed.

12. The Order No. 56 dated 14.6.04, so far as it relates to refusal of the prayer of the defence for recalling P.W.18 and fixing the date for examination of the accused u/s 313 of the said Code is set aside and now, the learned Fast Track Court would allow the prayer of the defence for recalling P.W.18 for the purpose of further cross-examination in accordance with law and in the event any such prayer is there on behalf of the defence under Sub-section (1) of Section 91 of the said Code for the purpose of production of the General Diary Entry or, any such documents, which the defence may feel necessary, the same would be allowed in accordance with law after giving an opportunity to the prosecution to controvert the same by resorting to provisions, as known to law.

13. Revisional application accordingly allowed.

14. The impugned Order No. 56 dated 14.6.04 stands accordingly modified.

15. No order as to costs.