
(2016) 10 CAL CK 0030
In the Calcutta High Court
Case No : C.R.R. No. 1022 of 2015

SK. Maharam Ali @ SK. Sakil

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, Section 401
Evidence Act, 1872 — Section 137

Citation : (2017) 1 CalCriLR 688

Hon'ble Judges : Sankar Acharyya, J.

Bench : Single Bench

Advocate : Mr. Soubhik Mitter, Advocate, for the petitioner; Mr. Arnab Chatterjee and Mr. Pratick Bose, Advocates, for the state

Final Decision : Allowed

Judgement

Sankar Acharyya, J.—Petitioner is the accused in Sessions Trial No. 09 (4)/2013 pending in the 1st Court of learned Additional Sessions Judge, Hooghly. In that case prosecution examined seven witnesses. Two police officers investigated the case. At the stage of cross-examination after completion of examination-in-chief of the 1st investigating police officer as PW 8, the petitioner filed a petition in the trial Court for a direction upon the prosecution for production of original general diary and vehicle register in respect of alleged incident dated 04.02.2010 before cross - examination of PW 8 but said prayer was rejected in the trial Court on 03.03.2015. Challenging that order this revisional application has been filed.

2. In the revisional application, inter alia, the petitioner contended that in connection with the alleged incident of murder of Sk. Ibrahim, for which the trial is going on in the trial court, this petitioner was assaulted by local people and his house was set on fire by them. During trial against this petitioner his specific defence was that on the date of occurrence (04.02.2010) at about 6:00-6:30 p.m. the petitioner, in injured condition was rescued and shifted to Imambara

hospital for his medical treatment and subsequently at 08:05 p.m. on that date FIR was lodged against the petitioner for the alleged murder of Sk. Ibrahim which is under trial in Sessions Trial No. 09 (04)/2013. Petitioner intends to establish that prior to lodging of the purported FIR at 8:05 p.m. police authorities got information of the alleged incident of murder. As such, petitioner prayed for production of relevant general diary and vehicle register of Gurap police station which are in the custody of prosecution for effective cross - examination of PW 8.

3. At the time of hearing, learned advocate for the petitioner submitted that prayer of the petitioner was very innocuous for a fair trial in a murder case. Learned advocate for the state submitted that petitioner may adduce evidence to establish his defence in accordance with law at appropriate stage and at this stage prosecution considers those documents in question as irrelevant for proving its case beyond reasonable doubt. He further submitted that the petitioner took dilatory tactics to delay the trial which has been reflected in the impugned order.

4. In the impugned order learned Judge in the trial Court held, "The sole purpose of the defence is to drag this case and to delay the entire proceeding and for that reason the present petition has been filed by the defence. Palpably the petition is devoid of merit".

5. The impugned order was passed referring to earlier incidents at the instance of accused - petitioner. This Court does not express any opinion as to whether the petitioner would be found not guilty even if he succeeds to establish his defence. In my opinion, production of G.D.E. book and vehicles register of Gurap police station for the date 04.02.2010 will not cause prejudice to either party.

6. Since the documents in question (G.D.E. book and vehicle register with entries of 04.02.2010) are under custody of State prosecution the same shall be produced in the trial Court at the risk of petitioner for effective cross - examination of PW 8 as per prayer of petitioner in the interest of fair trial in the case. But no original document of public office shall be marked exhibit for the accused petitioner for retaining in judicial record unless certified copy of such document is filed well ahead by petitioner for marking the same as exhibit by same number with the original public document for retaining in judicial record and for returning the original to the concerned authority. After completion of cross-examination of the witness the prosecution will be able to reexamine the witness under Section 137 of the Evidence Act as of right and for clarification of any new matter if introduced relating to the documents in question. Accordingly, the revisional application is allowed and the impugned order dated 03.03.2015 is set aside.

7. A copy of this judgment be sent to the trial Court forthwith for information with a request for disposal of the case expeditiously in accordance with law independently without granting unnecessary adjournment to the parties. However, the trial Court must not be influenced by any observation made in this

judgment.

8. Urgent Photostat certified copy of this judgment, if applied for, by the parties or their advocates on record, be given expeditiously following the usual formalities.