

(2011) 03 KAR CK 0340
In the Karnataka High Court
Case No : Criminal Petition No. 888 of 2011

Sri Nanju @ Barbending Nanju

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243, 311, 313
Penal Code, 1860 (IPC) — Section 109, 143, 148, 149, 201

Citation : (2011) 03 KAR CK 0340

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : Prasanna Kumar P. Daroji, for the Appellant; P.M. Nawaz, Addl. SPP, for the Respondent

Judgement

K.N. Keshavanarayana, J.—The Petitioner along with several other persons has been facing trial before the IV Additional Sessions Judge at Mysore in S.C. No. 1/2007 for the offences punishable under Sections 143, 148, 109, 365, 302 and 201 R/w. 149 of IPC. The Petitioner has been arraigned as Accused No. 14. The prosecution closed its side of evidence on 02.07.2010 and on 15.07.2010 the statement of the accused persons u/s 313 of Code of Criminal Procedure, was recorded. On the request of the counsel appearing on behalf of the accused persons, couple of adjournments were granted for leading defence evidence. However, since none of the accused led defence evidence, the defence was taken as "Nil" and the case was listed for hearing arguments on merits. It appears, the learned Counsel appearing for the present Petitioner-Accused No. 14 made a submission before the trial Court on 17.07.2010 that he has no defence evidence. However, when the case was set down for hearing arguments on the merits of the case, the Petitioner filed application u/s 243 r/w. 311 of Code of Criminal Procedure seeking permission to lead the defence evidence on the ground that he has already produced some CDs and photographs, therefore, it is just and proper to permit him to lead defence evidence. The said application was opposed by the prosecution. After hearing both sides, by the order dated

10.01.2011 impugned in this petition, the learned Sessions Judge rejected the said application. It is to quash the said order, the Petitioner has presented this petition.

2. I have heard the learned Counsel appearing for the Petitioner and also the learned Additional S.P.P. appearing for the Respondent-State. Perused the order impugned in this petition and also the other documents produced.

3. The Petitioner does not dispute the fact that after the prosecution evidence was closed, the Court examined some of the accused persons u/s 313 of Code of Criminal Procedure on 15.07.2010 and when the case had been posted for defence evidence, a submission on behalf of this Petitioner was made that he has no defence evidence. It appears after the defence evidence of the present Petitioner was taken as "Nil" on the submission of the learned Counsel appearing for him, the Petitioner produced some CDs and photographs, the contents of the same are said to be of some subsequent events, it is in the light of the said subsequent events, the Petitioner wanted an opportunity to lead defence evidence. Merely because at one point of time a statement had been made by the present Petitioner that he has no defence evidence, the opportunity sought on the basis of certain events said to have occurred subsequent to such representation, cannot be denied. The accused has a right to lead defence evidence. The rejection of his prayer for leading defence evidence has now resulted in denial of such opportunity to the Petitioner-accused. Therefore, the order impugned in this petition rejecting the application for permission to lead defence evidence has resulted in miscarriage of justice and also has resulted in great prejudice to the Petitioner-accused. No doubt the trial Court has been directed to dispose of the matter within a time frame. However, it is submitted on behalf of the State that the time fixed by this Court for disposal of the proceedings has already expired. Having regard to the facts and circumstances of the case, the order rejecting the prayer of the Petitioner to lead defence evidence, cannot be sustained and an opportunity is required to be afforded to the Petitioner to lead defence evidence, if any, on his behalf. However, the request of the learned Counsel for the Petitioner that he should be permitted to recall one of the prosecution witnesses in the light of the CDs and Photographs produced by him cannot be acceded to. The prosecution witnesses have been thoroughly cross-examined on behalf of the accused persons, therefore, there are no grounds to recall any of the prosecution witnesses. In this view of the matter, the petition is allowed in part. The order dated 10.01.2011 passed by the IV Additional Sessions Judge in S.C. No. 1/2007 rejecting the prayer of the Petitioner to lead defence evidence is set aside. The Petitioner is permitted to lead defence evidence either by examining himself as a witness or by examining any witness on his behalf. In the light of the earlier direction regarding disposal of the matter on merits within the specified time, the Petitioner is directed to lead his defence evidence in the trial Court on 17.03.2011 to which date now the case is reported to be posted, without asking for any further time.

A copy of this order be furnished to the learned Additional S.P.P. immediately.