

(1995) 05 CAL CK 0006
In the Calcutta High Court
Case No : Rev. Application No. Nil

Sridhar Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Penal Code, 1860 (IPC) — Section 302

Citation : (1996) CriLJ 813

Hon'ble Judges : Nure Alam Chowdhury, J

Bench : Single Bench

Advocate : Biplat Mitra and Swapan Kumar Mullick, for the Appellant; Sasanka Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Nure Alam Chowdhury, J.—This revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure has been heard as a "contested application."

2. Heard the learned Advocates on behalf of the petitioner and the State, perused the records.

3. In this application, the petitioner Sridhar Das, an accused in Sessions Trial No. 1(4)94, u/s 302 I.P.C. now pending before the learned Additional District Judge, 2nd Court, Alipore, has challenged the order dated January 2, 1995 passed by Sri R.N. Mallick Chowdhury in the aforesaid case, allowing the 3rd application of the learned Special Public Prosecutor in the aforesaid Trial so far as the prayer for recalling of PW-3 Smt. Rekha Ghosh Chowdhury, PW-6 Prabir Bhattacharyya and PW-8 Sri Babulal Shaw for their re-examination. It appears that two such similar applications for the same prayer for re-examination were rejected earlier by the same Court and those three witnesses PWs-3, 6 and 8 were declared "hostile" and cross-examined on behalf of the prosecution as well as on behalf of the accused-petitioner and were discharged on 11-7-94, 13-7-94 and 20-7-94

respectively. The first application on behalf of the prosecution containing the prayer for re-examination of those witnesses along with others was rejected on 22-8-94 and the subsequent second application containing same prayer was also rejected on 14-11-94 by the same Court.

4. Mr. Pradip Ghosh, learned Senior Advocate, appearing on behalf of the petitioner made threefold submissions before this Court is assailing the aforesaid order.

5. Mr. Ghosh, learned Senior Advocate firstly contended that after the first application on behalf of the prosecution praying for re-examination of the same PWs-3, 6 and 7 along with others was rejected by the same Court on 22-8-94, the same Court cannot set aside or review the earlier order under the Code of Criminal Procedure and as such the impugned order is liable to be set aside.

6. Mr. Ghosh, learned Senior Advocate next submitted that after a prosecution witness has been declared hostile by the prosecution and permitted by Court to be cross-examined on behalf of the prosecution and the same witness being also cross-examined on behalf of the accused discharged there cannot be any scope for re-examination of the said witness under the Code of Criminal Procedure and as such the impugned order is misconceived and untenable in law and is liable to be set aside.

7. Mr. Ghosh, learned Senior Advocate, thirdly submitted that the prosecution cannot be allowed to fill up the lacuna brought out in the prosecution case by the cross-examination of the prosecution witnesses on behalf of the accused persons by re-examination of those witnesses by recalling them by the prosecution to the prejudice of the accused persons. Mr. Ghosh, learned Senior Advocate also cited three decisions reported in (i) Bindeshwari Prasad Singh Vs. Kali Singh, (ii) AIR 1985 SC 1440 : (1986 Cri LJ 1074) (Major General A.S. Gauraya v. S.N. Thakur and (iii) Jitendra Nath Bose Vs. The State, in support of his submissions.

8. Mr. Sasanka Ghosh, learned Advocate appearing on behalf of the State could not produce any authority before this Court that the earlier order of a Court can be set aside or reviewed subsequently by the same Court or the prosecution can be allowed to fill up the lacuna in the prosecution case brought out by cross-examination of the prosecution-witnesses on behalf of the accused persons, by allowing the prosecution to recall its witnesses for re-examination by the prosecution.

9. In my view, there is considerable force in the aforesaid submissions of Mr. Pradip Ghosh, learned Senior Advocate on behalf of the petitioner and I hold that the impugned order is liable to be set aside as the learned Additional Sessions Judge, 2nd Court, Alipore, cannot set aside or review the earlier order dated 22-8-94 or 14-11-94 of the same Court and once an application on behalf of the prosecution for recalling a prosecution witness for re-examination is rejected by a Court, subsequent successive applications with the same prayer before the same Court is not maintainable in law.

10. This Court also holds that prosecution cannot be allowed to fill up the lacuna of the prosecution case, brought out by cross-examination of the prosecution witnesses on behalf of the accused persons by way of permitting the prosecution to recall the prosecution witnesses for re-examination.

11. The Revisional Application is therefore, allowed and the impugned order dated January 9, 1995 passed by Sri R. N. Mallick Chowdhury, learned Additional District Judge, 2nd Court, Alipore, in Sessions Trial No. 1(4)94 is set aside.

12. It appears that the Sessions Trial is on the verge of completion and as such the learned Additional Sessions Judge in the Court below is directed to conclude the trial as expeditiously as possible, preferably within six weeks from date.

13. Learned Advocates for the petitioner and the State are directed to communicate the gist of the order to the Court below.

14. Let the copy of this order go down to the Court below forthwith.