
(1999) 05 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No's. 299 of 1997 and 19/99

State

APPELLANT

Vs

Devendra Kumar

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 386, 389, 390, 391
Essential Commodities Act, 1955 — Section 3, 7
Penal Code, 1860 (IPC) — Section 120B, 407

Citation : (2000) 1 RLW 309 : (1999) 3 WLC 393 : (1999) 1 WLN 631

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—Heard learned Counsel for the parties.

2. By way of instant application, the prosecution, through the State of Rajasthan has sought indulgence of this Court in exercise of its inherent powers u/s 482 Cr.P.C. for recalling the order dated 20th April, 1998 passed in S.B. Cr. Revision Petition No. 299/97 titled as Devendra Kumar v. State, on the grounds interalia-

(1) that the impugned order is contrary to facts and material available on the record and therefore, it is necessary in the interest of justice to recall/modify the same,

(2) that the statutory provisions of Section 167(5) of Cr.P.C. have been applied in the instant case in an apparent error on face looking to the facts and circumstances of the case because the aforesaid statutory provision applies in summon cases, while in the instant case the mater which was pending against the petitioner before the trial court was not a summons case, though it has been canceled by the learned Counsel during the course of hearing that summary procedure is envisaged for trial of cases instituted under the Essential Commodities Act (for short the "E.C. Act") while in respect of substantive

offences punishable under the Indian Penal Code, such as Section 407 and 120-B I.P.C. the procedure with regard to trial of warrant case is attracted.

(3) that the accused petitioner was enlarged on bail by the trial Court and challan was submitted after completing the investigation and at the time when the accused was enlarged on bail, the trial court considered the matter u/s 167(5) Cr.P.C.

(4) that the trial court had drawn the order sheet and extended the period for submitting the challan and it is not necessary for the trial court to record the reasons for extending the period for submitting the challan in the interest of justice.

3. Before I enter upon discussions with reference to the aforesaid contention advanced by learned Counsel for the petitioner, the basic aspect of the matter which has to be discussed at the first instance is as to what are those circumstances which justify would recalling of the order dated 20th April, 1988, passed by this Court would justify in exercise of revisional jurisdiction as envisaged u/s 397 read with Section 401 Cr.P.C.

The scope of revisional jurisdiction u/s 397 Cr.P.C.

4. This Court has concurrent powers with that of Sessions Court for calling for and examining the record of any proceedings before any inferior criminal court situate within its or local jurisdiction for the purpose of satisfying itself as to the correctness, legality of propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior "Court, and this Court may further direct that the execution of any sentence or order be suspended and give further directions as may be necessary in the interest of justice.

5. Under the aforesaid provisions this Court can also exercise its revisional powers suo moto when attention is drawn to a clear illegality which however is not the position in the instant case. Likewise u/s 401 of the Cr.P.C. in the case of any proceedings the record of which has been called for by itself or which otherwise comes to its knowledge, this Court may in its discretion, exercise any of the powers conferred on a Court of Appeal by Section 386, 389, 390 and 391. The statutory safeguards which have been provided in view of the aforesaid provisions are that this Court should normally not interfere in exercise of its revisional jurisdiction with pure findings of fact, and can interfere only if the discretion has not been properly exercised.

6. With regard to Section 482, Cr.P.C. the present application for recalling the impugned order dated 20th April, 1998, has been moved by the State on the aforesaid grounds inter alia that the impugned order has resulted in abuse of process of law with regard to the investigation of the accused for offence punishable u/s 3/7 of the E.C. Act cases concerned, no special reasons were specified by the concerned investigating officer seeking extension of time beyond

a period of six months and the learned Counsel has also contended that notwithstanding the recording of special reasons by the learned Special Judge u/s 167(5) Cr.P.C. the trial Court could not have stopped the further investigation for the aforesaid offences since the continuation of investigation beyond the period of six months was necessary in view of the commission of substantive offence punishable u/s 407 and 120-B I.P.C. with which the accused was also charged and for which procedure for trial of warrant cases is envisaged in the Code.

7. I have examined the aforesaid contention advanced by learned Counsel for the petitioner with reference to the Provisions of law as referred to above. Prima-facie I am of the considered opinion that it was the statutory duty cast upon the trial Court to have strictly followed the provisions of Section 167(5) Cr.P.C. since in any case triable by a Magistrate as a summons-case if it is not possible for the prosecution to conclude the investigation within a period of six months from the date on which the accused was arrested, it is expected of the trial Court to make a specific order, stopping further investigation into the offence unless the concerned officer conducting the investigation satisfies the trial court that for special reasons to be stated in writing and in the interest of justice the continuation of the investigation beyond the period of six months is necessary. It is only thereafter the learned Magistrate/Special Judge conducting the trial as per the reasons to be satisfied as to why the continuation of investigation beyond six months is necessary, only in such cases and for exceptional reasons to be stated can permit extension of investigation beyond the statutory period and not otherwise.

8. Likewise with regard to warrant cases are concerned, special reasons have to be recorded, where the prosecution is unable to conclude either the investigation or where the Court is unable to conclude the trial beyond the statutory period. I am fortified in my aforesaid observations from the judgment of the Apex Court in the matter of Raj Deo Sharma Vs. The State of Bihar, where the Apex Court has highlighted the entitlement of the accused to speedy trial following the ratio of its earlier decision in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., as well as other cases.

9. In the matter of State of Orissa Vs. Ram Chander Agarwala and Others, , it has been observed by the Apex Court that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional jurisdiction. The ratio of the aforesaid decision clearly lays down that a judgment of the High Court on appeal or revision can not be reviewed or revised except in accordance with the provisions of Cr. Procedure Code. The provisions of Section 561(A)(Old) corresponding to Section 482 Cr.P.C. of the amended code cannot be invoked for exercise of a power which is specifically prohibited by the Court.

10. As a result of the above discussion, the application for recalling" the order dated 20th April, 1998, passed by this Court in S.B.Cr. Petition No. 229/97 being devoid of merit is accordingly dismissed.