
(2012) 05 UK CK 0065

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 442 of 2012 with Stay Application No. 480 of 2012

Surya Kant Dhasmana

APPELLANT

Vs

State of Uttarakhand and C.B.I.

RESPONDENT

Date of Decision : 03-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 311, 313, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (2012) 05 UK CK 0065

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Sanjeev Aggarwal, with Mr. Sandeep Kothari, for the Appellant; S.S. Adhikari, A.G.A. and Shri Arvind Vashisth, Advocate, present for C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this petition moved u/s 482 of Code of Criminal Procedure, 1973, the petitioner has sought quashing of the orders dated 19.11.2011, 02.12.2011, 23.12.2011, 24.02.2012 and 23.03.2012, passed by Special Judge Anti Corruption C.B.I., Dehradun, in Sessions Trial No. 129 of 1998, State vs. Surya Kant Dhasmana and others. Heard learned counsel for the parties.

2. Brief facts of the case are that the petitioner is facing trial in respect of an incident said to have been occurred on 03.10.1994, relating to offences punishable u/s 304, 307 and 201 of I.P.C. Initially the crime no. 298 of 1994, was registered in respect of offences punishable u/s 147, 148, 149, 302 and 307 of I.P.C. After investigation, charge sheet was filed in respect of offences punishable u/s 147, 148, 149, 304 and 302 of I.P.C. It appears that after hearing the parties on the charge, only offences punishable u/s 304/34, 307/34 and 201/34 of I.P.C., were found made out, and charge was framed accordingly on

05.02.1999. Thereafter the evidence was led by the C.B.I. for the prosecution and several witnesses were examined, and the trial remained pending till 2008.

3. A Criminal Misc. Application (C-482) No. 400 of 2008, was moved before this Court and Honorable Chief Justice vide its order dated 07.08.2008 directed the trial court to conclude the trial expeditiously.

4. However, the trial still remain pending for about another two years, and Criminal Misc. Application (C-482) No. 1017 of 2010 was moved by the present petitioner for expeditious disposal of the sessions trial. Said petition was disposed of by another bench vide its order dated 28.10.2010, again directing the trial court to decide the case expeditiously, as it was already more than sixteen years old. Said bench further directed that the trial be concluded preferably within four months. By then 29 witnesses had already been examined by the prosecution which close its evidence on 28.12.2010.

5. It appears that thereafter statement u/s 313 of Cr.P.C., was recorded, opportunity of adducing evidence in defence was given, arguments were heard, and judgment was reserved on 05.11.2011.

6. Strangely, the trial court ignoring two orders passed by this Court as mentioned above preferred to keep the trial pending after the judgment was reserved, and vide order dated 19.11.2011, asked C.B.I., as to why it did not think proper to examine Head Constable Kartar Singh u/s 161 of Cr.P.C., and fixed 02.12.2011. On said date (02.12.2011) the trial court by exercising powers u/s 311 of Cr.P.C., directed to summon Head Constable Kartar Singh, as a witness in the case. It appears that on said summons a report was received that Head Constable Kartar Singh had already died in 1998. On this, the trial court opted to examine the process server, and did not deliver the judgment. Instead, vide its order dated 23.12.2011, and 24.12.2011, the trial court directed that the case be fixed for rehearing on charge.

7. The above mentioned orders after the judgment was reserved by the trial court reflect that the trial court has misdirected itself by bringing the trial back to the stage of the charge in a trial pending for last seventeen years. This is completely against the spirit of the orders passed by this Court on 07.08.2008 and 28.10.2010. In the circumstances of the case, the accused can not be made to suffer rigmarole of the trial for an unending period, particularly when their appear to be no sufficient reason to keep the trial pending. Therefore, the petition u/s 482 of Cr.P.C., is allowed. The impugned orders passed by the trial court after the case was reserved for the judgment, are hereby set aside. The trial court is directed to deliver the judgment within one month from the date copy of this order is received by said Court. (Stay Application No. 480 of 2012 also stands disposed of).