

(2001) 08 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3416 of 2000

Tangudu Someswara Rao and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Insecticides Act, 1968 — Section 29, 3K
Insecticides Rules, 1971 — Rule 19

Citation : (2001) 2 ALD(Cri) 626 : (2001) 2 ALT(Cri) 352 : (2002) CriLJ 510

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : A. Ravi Shankar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

V. Eswaraiah, J.—The petitioners herein are the Accused Nos. 1,2,4 and 5 in C.C. No. 126 of 1998 on the file of the Judicial I Class Magistrate, Palasa. The prosecution was launched against the accused on the complaint filed u/s 29(i)(a) r/w Sec. 3K(i)(viii) of the Insecticides Act, 1968, and Rule 19 of the Insecticides Rules, 1971. The complainant was examined as PW-1 on 27.11.1998 and the charges were framed on 4.2.1999 and thereafter the case was posted for trial from time to time. At that stage, the revision petitioners herein, who are Accused Nos. 1,2,4, and 5, filed an application in CrI.M.P. No. 1275 of 2001 to stop all further proceedings in the above C.C., and acquit them on the ground that the prosecution did not produce any witness so far and the case is pending trial for more than two years and therefore they are entitled for the benefit of "Common Cause" cases reported in (1) and (2) Common Cause, A Registered Society Through its Director Vs. Union of India and others, . The learned Magistrate dismissed the said application and questioning the same this revision is filed.

2. The only question that arises for consideration in this case is whether non-completion of the trial within two years is attributable to the prosecution or to the petitioners. Though on certain dates, the complainant was absent, insofar as

the dates on which the complainant was present, some of the accused were not present and they have filed an application to condone their absence and it is not the case of the petitioners-accused that they were ready to cross-examine PW-1 and PW-1 was not ready for cross-examination and the delay is attributable only to the PW-1, complainant, but not to the petitioners. The learned Magistrate held that the accused-petitioners themselves have failed to cross-examine PW-1 and, therefore, they cannot take advantage of their own wrong and seek to discharge them from the criminal proceedings. The learned Magistrate rightly held that the accused-petitioners are not entitled for the benefit of the aforesaid judgments of the Apex Court as the delay, in not completing the trial within two years, is attributable to the petitioners alone.

3. Learned counsel appearing for the accused-petitioners submits that the crucial date of commencing the trial is the date on which the petitioners received the summons on 8.10.1998 and, therefore, if that is taken, the petitioners are entitled for the benefit of the judgments of the Apex Court.

4. The summons issued by the Magistrate for appearance of the petitioners on 8.10.98 is only to examine the complainant in the presence of the petitioners and after supply of the copies of the documents, the case was adjourned to 22.10.98 for examination of the complainant and on 27.11.98, the complainant was examined and thereafter only the Magistrate has taken cognizance and the accused were made to appear before the court for the purpose of trial and thereafter the charges were framed on 4.2.99. Before taking cognizance, the initial service of the summons for appearance of the petitioners on the complaint filed by the complainant, as it is not a police report, cannot be said to be a crucial date and the crucial date will be subsequent to the examination of the complainant and the date of taking cognizance is alone the crucial date. The learned counsel for the petitioners has not stated the exact date of taking cognizance, but the fact remains that the charges were framed only on 4.2.99 and since the accused denied the charges, the matter is posted for cross-examination of PW-1 by the accused and the case is posted from time to time from 4.2.99. But the fact remains that the accused did not examine PW-1 and delay is attributable to the petitioners alone and the petitioners cannot take advantage of their own wrong and seek the benefit of the judgment of the Supreme Court in the aforesaid Common Cause cases.

5. In view of the above facts and circumstances of the case, the revision is accordingly dismissed. No costs.