
(2001) 04 RAJ CK 0015

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 200 of 2001

Trilok Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2001) 04 RAJ CK 0015

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : Sachin Acharya and Mr. Sandeep Mehta, for the Appellant; Ramesh Purohit, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.R. Panwar, J.—Heard learned counsel for the parties.

2. The petitioner by this petition u/s 482 Cr.P.C. challenged the order of the learned Sessions Judge, Rajsamand, whereby he has refused to summon the defence witnesses as per the list of witnesses submitted by the accused petitioner in Sessions Case No. 12/2000.

3. The main grievance of the petitioner is that he has already filed the list of defence witnesses and requested the learned Trial Court to summon the. Vide order impugned, learned Trial Court has refused to summon the defence witnesses on the ground that such an application has not been filed prior to entering of the defence evidence as also the petitioner has not given undertaking to pay the expenses of the defence witnesses sought to be summoned.

4. Briefly stated the facts of the case which are necessary for the disposal of this misc. petition are that the accused petitioner is facing trial for the offence u/s 8/15 of the N.D.P.S. Act. After having availed 14 opportunities the prosecution closed evidence and the statement of accused petitioner was recorded on 14.3.2001 and case was posted for defence evidence of witnesses on 29th March

2001. On the date fixed for defence witnesses i.e. 29th March 2001, an application on behalf of the petitioner was moved for summoning 4 witnesses as defence witnesses. Learned Trial Court refused to summon those named defence witnesses and accorded an opportunity to the accused petitioner to produce defence witnesses at his own. Sub section (2) of Section 243 of Cr.P.C. provides - "if the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing :

Provided that when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

5. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. It is also settled law that powers conferred on the Court should be exercised judiciously and not capriciously or arbitrarily and improper or capriciously exercise of powers may lead to undesirable results. In order to ensure fair and impartial trial to the accused, the same facilities of summoning the witnesses as provided to the prosecution should also be conferred to the accused. Further it is incumbent upon the Court to take due care and caution while exercising the power so that no serious prejudice is caused to the prosecution or to the accused or to give unfair advantage to the rival side.

6. In the peculiar facts and circumstances of the case, I am of the considered opinion that learned Trial Court has committed illegality in refusing to summon the defence witnesses merely on hyper technical reasons. To secure the ends of justice I consider it just and proper to allow this Misc. Application.

7. In view of the aforesaid discussion, the application filed by the petitioner u/s 482 Cr.P.C. is allowed and the impugned order dated 23rd March, 2001 passed by the learned Trial Court is quashed and set aside and the learned Trial Court is directed to summon the defence witnesses as prayed for by the accused petitioner in his application dated 29th March 2001, if necessary, byailable warrants to secure their presence.