

(2022) 03 J&K CK 0063

In the Jammu And Kashmir High Court

Case No : Criminal Revision No. 32 Of 2021, Criminal Miscellaneous Cases No. 1439 Of 2021

Union Territory Of J&K Through Anticorruption Bureau

APPELLANT

Vs

Sonaullah Ahanger And Ors

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2022) 03 J&K CK 0063

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Asifa Padroo, G.A.Lone, Mujeeb Andrabi

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. The petitioner has challenged order dated 27.03.2021 passed by learned Special Judge Anticorruption Anantnag in a case titled State vs. Sonaullah Ahanger and Ors, arising out of FIR No.14 of 1993. By virtue of the aforesaid order the learned Special Judge has closed the prosecution evidence.

2. It has been contended by the petitioner that the impugned order passed by the trial court is not legally sustainable and it has resulted in miscarriage of justice. It has been further contended that delay in trial was not attributable to the petitioner but it was attributable to the accused persons, as they kept on absenting themselves on different dates of hearing before the trial court. It is also contended that the Investigating Officer is architect of a case and it was incumbent upon the trial court to record his statement, but without doing so, the trial court has directed the closure of evidence of prosecution.

3. I have heard learned counsel for the parties and perused the impugned order and grounds of challenge.

4. A perusal of the impugned order reveals that examination-in-chief of the Investigating Officer, PW Abdul Gaffar Malik has been recorded by the trial court, whereafter his statement was deferred due to paucity of time. It is also recorded in the impugned order that cross-examination of the aforesaid witness could not be recorded because the witness did not turn up. The learned Special Judge has, while closing the prosecution evidence, observed that the right of speedy trial is an essential part of fundamental right of life and liberty guaranteed under Article 21 of the Constitution of India and in this case the charge sheet was filed way back in the year 1997 but till date of passing of impugned order i.e, 27.03.2021, the prosecution could not complete its evidence. On these grounds the trial court has passed the impugned order.

5. As is clear from the impugned order, the examination-in-chief of the Investigating Officer has been recorded, whereafter his statement was deferred. Once part statement of a witness is recorded by the trial court, it becomes bounden duty of the court to record the remaining statement of the said witness and in this regard the trial court has to take all necessary steps to secure presence of the witness. The impugned order does not indicate as to what steps the trial court has taken for securing presence of PW Abdul Gaffar Malik which means that the trial court has not taken necessary steps for securing presence of the prosecution witness by issuing summons to him or by adopting coercive methods for securing his presence, in case the witness had avoided to appear in the court despite service of summons. Without taking these measures, the learned trial court has proceeded to close the evidence of the prosecution, merely because the trial of the case has prolonged.

6. It is true that an accused has a right of speedy trial, but then, while safeguarding this right, the court is not expected to circumvent the due procedure and close the evidence of prosecution in a serious offence like an offence under the provisions of Prevention of Corruption Act for which the respondents/accused stand charged. The witness, whose part statement has been recorded, happens to be the Investigating Officer of the case. An Investigating Officer is a material witness in a trial relating to offence under Prevention of Corruption Act, therefore, it was all the more necessary for the learned Special Judge to take all necessary steps for securing the presence of said witness so that his remaining statement could be recorded.

7. In my aforesaid view I am fortified by the ratio laid down by this Court in the case of Bansi Lal v/s Ab.Rashid & Anr, 2007 SLJ 203, wherein, while dealing with a similar issue, this Court observed as under:-

"21. Omission of learned Magistrate to summon the government employees and eye witnesses on its own and his complete dependence on the prosecution for production of evidence, constrains me to exercise criminal revisional jurisdiction, and to hold that the learned Magistrate had erred in not issuing its own process to summon the prosecution witnesses including the government employees, and in closing the prosecution evidence without completing the statement of the

petitioner, whose statement had been recorded in part. This has eventually resulted in manifest error of law and failure of justice. I would, therefore, set aside the order of acquittal of the respondent, impugned in the revision petition, and direct his retrial with a direction to the learned Magistrate to take requisite steps to ensure the presence of witnesses before it and to proceed with the trial in accordance with law.”

8. For the foregoing discussion, it is clear, that the learned trial court, while passing the impugned order, has abdicated its legal duty of summoning the Investigating Officer for recording his remaining statement. Thus, the learned Special Judge has committed a grave illegality and, as such, the impugned order deserves to be set aside.

9. Accordingly, the revision petition is allowed and the impugned order is set aside. The petitioner is directed to ensure the appearance of Investigating Officer for recording his remaining statement on next date of hearing fixed before the trial court. To secure his appearance the learned Special Judge shall issue summons to the witness. Having regard to the age of the case, learned trial court is directed to expedite the decision of the case. It is further made clear that the learned trial court shall not grant more than two opportunities to the petitioner herein for producing the witness before the court unless there are compelling reasons to grant any further opportunity.

10. The petition stands disposed of.