

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-822-2013

Date of decision : 10.02.2015

State of Haryana

... Petitioner

Versus

Anrej Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms.Neelam Kashyap, DAG, Haryana.

None for the respondents.

REKHA MITTAL, J.

The present petition lays challenge to order dated 14.01.2013 passed by the Additional Sessions Judge, Kurukshetra whereby the criminal trial pertaining to FIR No.225 dated 30.07.2012 for commission of offence punishable under Sections 148, 149, 323, 324, 307, 427, 452, 506 of the Indian Penal Code (in short 'IPC') pending for evidence of the prosecution was adjourned subject to payment of Rs.8000/- as costs to the accused.

Counsel for the petitioner would contend that in the aforesaid case, 4 accused are in judicial custody whereas 3 accused namely Rishi Pal, Sultan and Angrej are on bail. After framing of charge, the Court issued notice for securing presence of prosecution witnesses. It is further submitted that serving official visited the given address of the witnesses (private) along with Prem Singh, Chowkidar of the village but as the witnesses were not found in the village and their family members refused to receive the summons or disclose their telephone numbers etc. the process could not be tendered to them for service. It is further argued that

14.01.2013 was the first date for recording evidence of prosecution and therefore, there was no question of the accused suffering from protracted trial which is the reason that weighed in mind of the trial Court to impose costs of Rs.8000/- payable to the accused. It is further argued that 4 accused are in the custody, therefore, expenses in regard to their boarding and lodging are being incurred by the State. The prosecution is always interested to examine the witnesses at the earliest as delay in examination of witnesses would ordinarily enure to benefit of the accused. It is prayed that impugned order to the extent of imposing costs of Rs.8000/- may be set aside.

There is no representation on behalf of the respondents who were earlier being represented by counsel, as a result, there is no counter to the submissions made by counsel for the State of Haryana.

I have heard counsel for the petitioner and perused the impugned order.

Section 309 of the Code of Criminal Procedure (in short 'Cr.P.C.') provides for power to postpone or adjourn proceedings. A relevant extract from Section 309 (2) Cr.P.C. reads as follows:-

“(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.”

The trial Court is empowered to adjourn any inquiry or trial but it is enjoined upon the Court to record its reasons for such adjournment.

The Court is also competent to fix any terms as it thinks fit while postponing or adjourning the inquiry or trial.

The learned trial Court in the impugned order has made reference to the judgments of Hon'ble the Supreme Court of India *Zahira Habibullah Sheikh & Another Vs. State of Gujarat & Others, AIR 2006 (S.C.) 1367* and *Shakila Abdul Gaffar Khan Vs. Vasant Raghunath Dhoble (2003) 7 SCC 749*. There is also reference to certain observations made in the case of *Jennison Vs. Baker (1972) 1 All ER 997*. In the concluding para there is reference to right of the accused to have a speedy trial which is stated to be part of right of life under Article 21 of the Constitution of India. There is no such observation by the Court that the report made by the serving official that witnesses were not found present at the given address is false or the witnesses were actually present in the village from the date of issuance of process till the date fixed in the case. It appears that process was issued by the Court on 19.12.2012 and the case was fixed for 14.01.2013 for evidence of the prosecution. Keeping in view the facts and circumstances of the present case, I am of the considered opinion that the trial Court has not taken a reasonable view of the matter by imposing costs of Rs.8000/- payable by the State for its failure to procure presence of the witnesses on the first date of hearing. In this view of the matter, the order passed by the trial Court imposing costs of Rs.8000/- cannot be allowed to sustain and accordingly set aside.

Dismissed.

(REKHA MITTAL)
JUDGE

February 10, 2015.

DK