

Waeem Ahmad & Ors. vs State Of U.P. & Ors. on 27 August, 2019

Author: Rajeev Singh

Bench: Rajeev Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 11

Case :- U/S 482/378/407 No. - 5804 of 2019

Applicant :- Waeem Ahmad & Ors.

Opposite Party :- State Of U.P. & Ors.

Counsel for Applicant :- Ram Bux Rawat

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

Heard Shri Ram Bux Rawat, learned counsel for applicants, learned A.G.A. and perused the record.

This application under Section 482 Cr.P.C has been filed for directing the learned Additional Sessions Judge-III, Lakhimpur Kheri to consider and decide the Appeal No.02 of 2019 (Waseem Ahmad & Ors Vs. Smt. Nazima Bano @ Nazma) and consider the application under Section 5 of Indian Limitation Act and to the recovery proceeding initiated by the learned Additional Chief Judicial Magistrate-II, Lakhimpur Kheri in pursuance of ex-parte order dated 21.03.2013.

Learned A.G.A. has raised the preliminary objection and submitted that no such order as prayed can be granted in the petition under Section 482 Cr.P.C. He has further submitted that the applicants ought to file petition under Section 227 of Constitution of India, as there is no abuse of process of any Court, as the trial is going on.

Learned counsel for the applicants has submitted on the objection of learned A.G.A., it is well settled by the Hon'ble Supreme Court that justice delayed is justice denied. As the exparte order dated 21.03.2013 was passed in Case No.3795 of 2012 under the Provision of the Protection of Women from Domestic Voilence Act and the appeal was filed along with the delay condonation application.

As the opposite party No.4 has filed the objection, but the matter is being adjourned and the delay condonation application is not being decided by the court below. In the meantime, recovery proceedings has been initiated by the court below in pursuance of the order dated 21.03.2013. As delay in deciding the condonation application is clear abuse of process of court below and also the ends of justice.

In such circumstances, this Court as inherent power under the provision of Section 482 Cr.P.C. The relevant part of provision of Section 482 Cr.P.C. is reproduced as under:-

"Saving of inherent powers of High Court.?Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Considering the above mentioned facts and circumstances of the case, it is found that the opposite party No.4 filed an complaint under the provision of the Protection of Women from Domestic Voilence Act on 10.07.2012 which was allowed on 21.03.2013 (exparte order) and when the recovery proceedings was initiated, then it came into the knowledge of the applicants, then the appeal was filed along with the delay condonation application on 07.01.2019. It is also evident from the record that objection was filed by the opposite party No.4 and vide order dated 17.07.2019 next date was fixed for disposal of the objection, but the appeal was adjourned. In the meantime, the opposite party No.4 is pressing the recovery/execution proceedings. It is bound duty of the court below to decide the delay condonation application and interim relief application in accordance with law to secure the ends of justice.

In the case of Vakil Prasad [(2009) 3 SCC 355], Hon'ble Apex Court observes:

?The right to speedy trial in all criminal proceedings is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigation as well.?

In the case of Ranjan Dwivedi v. C.B.I. [(2012) 8 SCC 495], Hon'ble court observed in para 20 the need for speedy trial in following words:

?The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a three fold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves

the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend him or herself. Stated another way, the purpose of both the criminal procedure rules governing speedy trials and the constitutional provisions, in particular, Article 21, is to relieve an accused of the anxiety associated with a suspended prosecution and provide reasonably prompt administration of justice.?

Section 309 of the Cr.P.C. reflects the constitutional guarantee of speedy trial?, was observed by Constitution Bench in the case of Kartar Singh v. State of Punjab [(1994) 3 SCC 569].

It is also relevant to mention here that Section 309 Cr.P.C. also provide that in every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. It is further provided that no adjournment shall be granted at the request of a party, except where the circumstances are beyond party.

In such circumstances, the arguments of learned A.G.A. fails and this Court finds that the petition under Section 482 Cr.P.C. is maintainable to give an direction for expedite the proceedings of court below to secure ends of justice accordingly.

In view of above, it is provided that the Court below will decide the case expeditiously, without granting any unnecessary adjournment to any party and if adjournment is inevitable that may be subject to heavy cost and for short dates.

With the aforesaid observation/direction, this application is finally disposed of.

Order Date :- 27.8.2019 Amit/-