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Drafted by Shri R. K. Chandra
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within time

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

NO. C. NO. 8719 /1995.

CRIMINAL APPEAL NO. _____ /1995.

APPELLANT:-

THE STATE OF M.P. THROUGH POLICE
STATION, NOTWALI, DISTT. RAIPUR.

-Vs-

RESPONDENTS:-

Chandrakant Shah, s/o Ram Ji
Shah, aged 40 years, s/o Mahara
Nagar, Shilahi Distt. Durg(M.P.)

PUBLIC ACTION FOR LEAVE TO APPEAL UNDER SECTION 372(2)
CR. P. C. / APPEAL UNDER SECTION 374(1) OF THE CR. P. C.

The appellant, above named, begs to prefer this appeal against the judgement and finding dt. 27.4.1994 of the Court of Chief Judicial Magistrate, Raipur, passed in Criminal Case No. 1857/1992 acquitting the non-applicant from the charge U/s 224 of IPC on the following grounds amongst others:-

GROUND OF THE CASE:-

1. That the learned Trial Court has erred in acquitting the non-applicant from the charges mentioned above.
2. That the Learned Trial Court has acquitted the non-applicant on the basis that the warrant of commitment issued by Shri Mijur Judicial Magistrate, First Class, Durg, was not produced. It is submitted that for proving the facts that the accused was in confinement this fact could have been proved by documentary and oral evidence. But the Learned Trial Court has acquitted the non-applicant without any cogent reasons.

3. It is submitted that to prove the fact that the accused was in confinement and custody, the prosecution has produced oral evidence as well as the documentary evidences.

4. For instance the documentary evidence which has been produced by the prosecution is to requisition from the court of SRI J. S. Misra, which have been marked as Article 2-1 & Article 2-5. These documents clearly indicates that accused Chandrakant Shah was in confinement. Apart from this other document namely the Jail Register have also been proved by the prosecution which mentions that the Chandrakant Shah was in confinement in Raipur as under trial prisoner. This documentary evidence has been completely left sight by the Learned Trial Court.

5. It is submitted that Article 2-1 & 2-5 are the public document. Even then they have been proved by the prosecution but the Learned Trial Court has not given any weight to the aforesaid document and committed an error by acquitting the non-applicant from the charges mentioned above. It is submitted that there is overwhelming evidence to show that accused Chandrakant Shah was in custody and if where he has fled from the custody.

6. That it is submitted that the Learned Trial Court has drawn an adverse inference by not examining security guard Sholasingh. It is submitted that great respect merely by not examining Sholasingh no adverse inference ought to have been drawn by the Learned Trial Court against the prosecution because prosecution has filed an application for examining

wholesome as a court witness but that request was turned by the Learned Trial Court. Therefore, Learned Trial Court ought not to have drawn an adverse inference against the prosecution.

7. That in this case the Learned Trial Court has lost sight of the material evidence produced by the prosecution.

8. That in this case the Learned Trial Court has misappreciated the evidence on record produced by the prosecution. Thus a great prejudice has been caused to the prosecution and the finding arrived at the conclusion of acquittal of the non-applicant is based upon misappreciation of evidence on record hence they are perverse and contrary to law, therefore, deserves to be quashed and set aside.

PRAYER.

It is, therefore, most humbly prayed that this Hon. Court be pleased to:-

1. grant leave to appeal against the impugned judgment of acquittal.
2. set aside the impugned judgment and convict the respondents of the offences charged.
3. proceed against the respondents U/s 200 Cr.P.C. during the pendency of this appeal.


GOVERNMENT ADVOCATE.

CERTIFICATE.

CERTIFIED that I must have been nominated by the State Government to produce the appeal in the High Court at Madhya Pradesh at Jabalpur.


GOVERNMENT ADVOCATE.

IN THE HIGH COURT OF JUDICATURE AT : JABALPUR.

M.C.C.No. _____ of 1995.

Applicant :

State of Madhya Pradesh

Vs.

Respondents:

Gyan Prakash Mishra, Son of Anutan Mishra
aged 28 years, resident of Steel Nagar
Camp-1, Bilal, District DURG.

APPLICATION UNDER SEC. 430(2) Cr.P.C. FOR CANCELLATION OF
BAIL GRANTED TO THE APPLICANT BY THIS HON'BLE COURT ON
17.8.95 IN M.C.C.No. 2082/95.

The applicant begs to submit as under :-

1. That the respondent was arrested on 13.10.91 on the allegation that he was involved in murder of labour leader by name Guha Niyogi on or about 28.1.91.
2. That the respondent's involvement is not only in the conspiracy but in the offence itself as he accompanied the main co-accused Paltan Mallah, who actually committed the murder to the spot as is to be gathered from the statement of Keshnath.
3. That there is evidence of Ravindra Kumar, the driver who took the party to Kathmandu, has disclosed that after procuring arms, another co-accused Chandra Kama Baha had stated that with such a fine and sophisticated gun there will be no difficulty in eliminating Niyogi and the respondent had assured him that the work would be done.
4. That there is evidence to suggest that the respondent was instrumental in arranging for murder, ~~xxxx~~ hiring men for the purpose and arranging money and ammunition.
5. That this was the forth application, three applications were rejected by the Hon'ble Court.
6. That the C.B.I., New Delhi is prosecuting Niyogi murder case and the State of M.P. has nothing to do in this case.
7. That in all previous bail applications the C.B.I. was heard and their ~~xxxx~~ counsel appeared and had opposed the bail.

8. That when the bail was granted the C.B.I. had no notice of the date nor was it heard.

9. That this max fact was also known to the respondent's counsel and in all fairness he should have informed the Hon'ble Court as the Panel lawyer who was there to represent the State Govt. did not know this fact that the prosecuting agency was S.C.B.I. and not the State Govt.

10. That the Panel lawyer had no authority to appear on behalf of the C.B.I.

11. That the prosecuting agency i.e.C.B.I. was not given an opportunity to oppose before granting bail to the applicant.

12. That the bail has been granted on the ground that there is inordinate delay in trial and the reluctance on the part of the prosecution to examine its material witness to connect the present respondent with the offence.

13. That it is respectfully submitted that the delay in trial is not on account of the prosecution but because of the applicant respondent and the co-accused. The applicant respondent and the co-accused are not co-operating with the prosecution.

14. That if the C.B.I. was heard before granting bail they would have pointed out that the delay is on account of the respondent and other co-accused.

P R A Y E R .

It is, therefore, prayed that the Hon ble Court be pleased to cancel the bail granted to the respondent on 17.8.95 in M.Cr.C.No.2085/95 as the prosecuting agency was not heard.

Jabalpur :

Dt.1.9.95.

COUNSEL FOR APPLICANT.