

Criminal Revisional
PRESENT: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 08-02-2010.
C.R.R. No. 83 of 2010
Prabir Ghosh & Ors.
versus
State Of West Bengal

Point:

List of witnesses: In a case under the Prevention of Corruption Act Whether defence is required to furnish list of witnesses- Prevention of Corruption Act, 1988-S.22

Fact: The petitioners have been facing trial in a Sessions Court of a charge under Sections 498A/306/34 of the Indian Penal Code. At the stage of examination of the defence witnesses, the Learned Judge insisted them to supply the list of defence witnesses and further directed unless the list was supplied except the petitioners, the defence would not be permitted to examine any other witness. Being aggrieved by such order, the petitioners moved this criminal revision.

Held: The defence is required to furnish the list of witnesses only when the trial relates to any offence punishable under the Prevention of Corruption Act and in a case where it is not otherwise possible for the defence to produce its witnesses and Court's order is necessary for compelling appearance of such witnesses and production of any document. (Paragraph – 3)

For Petitioners : Mr. Manjit Singh
For State : Mr. Swapan Kumar Mullick

The Court:

1. The petitioners have been facing their trial in a Sessions Court of a charge under Sections 498A/306/34 of the Indian Penal Code. After their examination under Section 313 of the Code of Criminal Procedure was over, when they were called upon to enter into their defence, the petitioners intended to examine the defence witnesses. At this stage, the Learned Judge insisted them to supply the list of defence witnesses and further directed unless the list was supplied except the petitioners, the defence would not be permitted to examine any other witness. Being aggrieved by such order, the petitioners moved this criminal revision.

2. Mr. Swapan Kumar Mullick, the learned advocate appearing on behalf of the State in his usual fairness submitted although under the provisions of the Code of Criminal Procedure, the prosecution is required to furnish the list of witnesses before the commencement of the trial, but there is no such provisions which requires the list of witnesses also be supplied by the defence beforehand.

3. Now, having considered the relevant provisions of the Code of Criminal Procedure and I do not find anything whereby the defence is required to supply the list of witnesses before their examination. However, the defence is required to furnish the list of witnesses only when the trial relates to any offence punishable under the Prevention of Corruption Act and in a case where it is not otherwise possible for the defence to produce its witnesses and Court's order is necessary for compelling appearance of such witnesses and production of any document.

4. Accordingly, the impugned order is set aside. Since, the defence has no right to examine any number of witnesses, it will be open to the Trial Court to reject the defence prayer for examination of any particular witness for the reasons to be recorded, if it considers that examination of such witness is not necessary and is intended to delay the trial and defeat the ends of justice. The Learned Judge is directed to proceed with the trial without insisting the defence to furnish the list of witnesses beforehand.

This application stands allowed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)