

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1135 OF 2017

(Arising out of SLP (Criminal) No. 4639 of 2017)

JAGDISH & ANR.

... Appellants

VERSUS

STATE OF RAJASTHAN

... Respondent

O R D E R

Leave granted.

The appellant is facing trial for offence under Section 308 of the Indian Penal Code (IPC). On 22.05.2015, he had moved an application for certain time to cross examine the prosecution witnesses which application was rejected by the Trial Court. Against that order, the appellant had approached the High Court. The High Court disposed of the petition of the appellant filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) by giving an opportunity to the appellant to cross examine the prosecution witnesses subject to payment of Rs.5,000/- as cost which was to be deposited within 15 days. Order was passed on 30.11.2016 and, as such, the amount was to be deposited by 15.12.2016. The petitioner could not deposit the amount by 15.12.2016 but the appellant had deposited the said amount only on 24.12.2016, i.e., after a delay of 09 days. In these

circumstances, the appellant moved an application for extension of time by 09 days. However, vide the impugned order, the High Court has dismissed this application only stating that there is no ground for extension of time since 15 days' time has already been given.

We consider that this order refusing to grant extension of time even by 09 days, more so when the petitioner had given plausible explanation in his application, is clearly erroneous and would cause miscarriage of justice, inasmuch as, the right to cross-examine the prosecution witnesses is a valuable right which is given to the petitioner who is accused of the aforesaid offence. This aspect was properly appreciated while passing order dated 30.11.2016 and that is the reason that opportunity to cross-examine the witnesses was granted to the petitioner. It should not have been snatched or taken back by adopting such a technical attitude even when the order was complied with and the amount was deposited but there was a delay of 09 days in depositing the same.

We, thus, set aside the impugned order of the High Court and allow this appeal.

We are conscious of the fact that this order is passed without notice to the respondent as we are of the opinion that issuance of notice in a matter like this would unnecessarily cause further delay. In case, the respondent

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is aggrieved by this order, it can always approach this  
Court.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ASHOK BHUSHAN ]

New Delhi;  
July 05, 2017.

ITEM NO.27

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 004639/2017

(Arising out of impugned final judgment and order dated 24-04-2017 in SBCRL No. 135/2017 in SBCRL No. 3143/2015 passed by the High Court of Judicature at Rajasthan at Jaipur)

JAGDISH & ANR.

Petitioner(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date : 05-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Mr. Ajay Choudhary, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(NIDHI AHUJA)  
COURT MASTER

(MALA KUMARI SHARMA)  
COURT MASTER

[Signed order is placed on the file.]