

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.228 OF 2020
(Arising out of SLP(Cr1.)No.8566 of 2019)

HAMIR SINGH

... APPELLANT

Versus

SHASHENDRA KUMAR & ANR.

... RESPONDENTS

O R D E R

Leave granted.

The instant appeal, by way of special leave, is directed against the order dated 22.08.2019 passed by the High Court of Judicature at Allahabad whereby the petition under Section 482 Cr.P.C., preferred by the first respondent before us, was allowed with the following directions:

"After giving my anxious consideration to the submissions made by counsel for the parties and in the present factual scenario of the case in hand, the Additional S.P. Sri Vipul Srivastava and Inspector of Police Akhilesh Kumar Mishra (last I.O.), who can throw substantial light on the guilt or innocence of the applicant and thus the applicant and co-accused cannot be denied of their valuable right to examine them as defence witnesses causing irreparable loss to them as they would never be able to prove their plea of alibi by evidence collected by the aforesaid police officers.

I am of the considered opinion that the impugned orders dated 21.1.2019 and 8.7.2019 are liable to be set aside. Thus, the orders dated 21.1.2019 and 8.7.2019 are set aside.

However, in view of the fact that other two co-accused are languishing in jail for the past several years and there are directions of this Court in bail application of co-accused Shiv Kumar for expediting

trial and deciding the same within specified period, I hereby direct that if an application under Section 233 Cr.P.C. is moved by the applicant and co-accused for issue of process for compelling attendance of two police officers namely, Akhilesh Kumar Mishra and Vipul Srivastava along with production of documents within ten days from today, the learned trial Judge shall issue process for examination the said witnesses as defence witnesses, he shall ensure that summons are served on the aforesaid officers within two weeks thereafter, with further direction to them to appear before the Court along with requisite documents/evidence collected during inquiry/investigation and shall make its full endeavour to complete defence evidence within one and half months from the date of issuance of process for compelling their attendance.

It is further directed that except the aforesaid witnesses, defence will not be allowed to examine any other witness as defence witness and the Court shall not adjourn the trial at the behest of prosecution or the defence and shall decide the trial within three months.

It is made clear that the learned Judge shall be at its liberty to draw its own inference in respect of the deposition of aforesaid defence witnesses and including the admissibility of evidence proved by them and shall not be influenced by any observations made by the Court hereinabove."

The aforesaid directions relate to Session Trial No.111 of 2016 arising out of Case Crime No.76 of 2016 under Section 302/149 and Sections 147 and 148 of the Indian Penal Code, registered at P.S.Kotwali Auraiya, District Auraiya, Uttar Pradesh.

The effect of the impugned order passed by the High Court is that the first respondent would be allowed to summon two police officers namely, Akhilesh Kumar Mishra and Vipul Srivastava as defence witnesses along with the documents etc.

We have heard learned counsel for the parties at length and carefully perused the record.

Respondent No.1 was summoned under Section 319 Cr.PC vide order dated 14.02.2017 by the trial court, which was challenged

before the High Court by filing CRR No.633/2017, and the High Court vide its order dated 01.03.2017 dismissed the same. Challenging the said order, SLP(Cr1.)No.3431/2017 and SLP(Cr1.)Nos.8891-8892/2017 were filed before this Court which were dismissed on 03.04.2018.

We are in agreement with the learned counsel for the appellant that in view of the aforesaid order, the trial court should not take into consideration the Report dated 23.05.2016 submitted by the Additional Superintendent of Police - Vipul Kumar Srivastava. To this extent, the impugned order has allowed the first respondent to produce in evidence the Report dated 23.05.2016, which request was specifically rejected and was held to be execrable. Faced with the aforesaid position, Mr.Siddharth Luthra, learned Senior Advocate had submitted that his client was summoned subsequently under Section 319 of the Cr.P.C. and reports supplementary in nature were filed earlier. This submission would not make any difference and must be rejected. We also do not find any justification and reason why Akhilesh Kumar Mishra, who is certainly not an eye witness, should be allowed to appear as a defence witness for production of documents, which we would observe would fall foul of the order of this Court dated 03.04.2018.

Nevertheless, we would record the statement made by the Senior Advocate of the first respondent whereby the first respondent has sought liberty to move an application to produce witnesses in respect of what was submitted by the first respondent as two important pieces of evidence namely, CCTV footage of Hotel Royal Clip, Swarup Nagar, Kanpur and CDR of a mobile phone as defence evidence. Without commenting on merits, we would observe

that if any such application is filed, the State would be entitled to file response and the prayer would be considered and examined on merits and in accordance with law.

Recording the above, the impugned order passed by the High Court is set aside.

Taking into consideration the long pendency of the matter, the trial court is requested to complete the trial expeditiously without unnecessary adjournments.

The appeal stands disposed of in the above terms.

.....J.
(N.V.RAMANA)

.....J.
(SANJIV KHANNA)

.....J.
(KRISHNA MURARI)

NEW DELHI;
FEBRUARY 04, 2020.

ITEM NO.3

COURT NO.2

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 (CrI.) No(s).8566/2019

(Arising out of impugned final judgment and order dated 22-08-2019 in A482 No.27214/2019 passed by the High Court of Judicature at Allahabad)

HAMIR SINGH

appellant(s)

VERSUS

SHASHENDRA KUMAR & ANR.

Respondent(s)

IA No.157800/2019 - EXEMPTION FROM FILING O.T.

Date : 04-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE KRISHNA MURARI

For appellant(s) Mr. Deepak Kumar Singh, Adv.
Mr. Ram Lakhan Singh, Adv.
Mr. Ranjeet Singh, Adv.
Mr. Naresh Kumar, AOR

For Respondent(s) Mr. Siddharth Luthra, Sr.Adv.
Mr. G.Umapati, Adv.
Mr. Vibhu Tiwari, Adv.
Ms. Vijaya Singh, Adv.
Mr. Pankaj Singh, Adv.
Mr. Sushmit Chauhan, Adv.
For M/S. Vidhi International, AOR

Mr. Ankit Goel, AOR
Mr. R.K. Gupta, Adv.

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

Leave granted.

The appeal stands disposed of in terms of the signed order.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

