2017 P Cr. L J 1654

[Balochistan]

Before Mrs. Syeda Tahira Safdar and Syed Anwar Aftab, JJ

DOST MUHAMMAD---Petitioner

Versus

ADDITIONAL SESSIONS JUDGE BARKHAN AT RAKHNI and another---Respondents

C.P. No. 646 of 2015, decided on 31st May, 2017.

(a) Criminal Procedure Code (V of 1898)---

----S. 344---Adjournment---Scope---Reasons for adjournments must be in writing---Duration for adjournment must be for such time as considered reasonable by the court---Adjournment or postponement of the proceedings should be for a definite time and period and not indefinitely.

(b) Criminal Procedure Code (V of 1898)---

----S. 344---Postponement or adjournment of proceedings---Incident, in the present case, was reported by complainant, resulting in registration of FIR---Police Report was submitted with nomination of accused-petitioner and co-accused persons---Trial Court directed to place the case in dormant for the reason that complainant and the eye-witnesses were not available, while accused persons were on bail---accused-petitioner contended that no order could be passed to place the criminal case in dormant for the reason of non-availability of prosecution witnesses---Validity---Trial Court had adjourned the proceedings indefinitely, thus violating the mandate of law---Reasons behind the impugned order were that the complainant and one of the eye-witnesses were involved in a murder case and were absconding---Said reasons in no way empowered the Trial Court to adjourn the proceedings for indefinite period---Case could not be kept pending for the evidence of the persons who were fugitive from law---Fugitive from law lost his normal rights, granted by law, procedural or substantial---Absence of the witnesses would not mean a "reasonable cause" to adjourn the case for an indefinite period---Constitutional petition was accepted by setting aside the impugned order.

Waseem Khan Jadoon for Petitioner.

Mrs. Noor Jahan Kahoor, Additional Prosecutor-General for Respondents.

Date of hearing: 29th March, 2017.

JUDGMENT

MRS. SYEDA TAHIRA SAFDAR, J.---The order dated 18th June, 2015 of Additional Sessions Judge, Barkhan at Rakhni, whereby the trial court directed to place the case in dormant for the reason that the complainant and the eye-witnesses Wazir Muhammad and Mateen were not available, while the accused were shown to be on bail, and were directed to remain on bail till date resulted in filing of the petition in hand.

2. The petitioner, one of the accused before the trial court, felt aggrieved of the order, approached this Court while contending that the law was misappreciated, that it was overlooked that there could be no order to place a criminal case in dormant for the reason of non-availability of the witnesses of the prosecution, that the remaining witnesses were available, but there was no effort to procure their attendance to record their statements. The order was claimed to be prejudicial to him.

3. The learned counsel for the petitioner and the learned Additional Prosecutor General both were aggrieved and showed their reservations on legality of the impugned order. The papers annexed with the petition were with the facts that the incident was of 27th June, 2012, reported by one Wazir Muhammad, resulted in registration of FIR No. 37 of 2012 with Levies Station Baghao, Barkhan. While on completion of investigation the Police Report was submitted with nomination of the accused Dost Muhammad, Rozay Khan, Bahadur Khan, Ado, Hashim Khan, Noor Jan, Siddiqu and Shabir. The trial court took cognizance of the offence, when two of the persons nominated namely Dost Muhammad and Noor Jan were before it, thus indicted them of the charge on 12th September, 2014. The prosecution was directed to call for their evidence, as the accused were with denial of the charge. Copies of order sheets, maintained by the trial court, available on the record, reveal that the complainant Wazir Muhammad and two witnesses Mateen and Din Muhammad were summoned, but they avoided to appear, as a last resort warrants of arrest were also issued. While on 28th May, 2015 one of the witnesses Din Muhammad was in attendance, but due to non appearance of the counsel for the accused his statement was not recorded. On 18th June, 2015 an application was filed by the Prosecutor to place the case in dormant due to non-availability of the witnesses. The reason behind the non-appearance was shown that both the witnesses i.e. Wazir Muhammad and Mateen were wanted in a murder case, and were fugitive from law. The trial court acceded to the request of the Prosecutor and placed the case in dormant.

4. Section 344 Criminal Procedure Code (Cr.P.C.) empowered a trial court to postpone or adjourn the proceedings for the reasons to be recorded in writing. For better understanding reproduction of the section will be beneficial:

> **"344. Power to postpone or adjourn proceedings**.---(1) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused if in custody:

Remand. Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a Court other than a High Court shall be in writing signed by the Presiding Judge or Magistrate.

Explanation. Reasonable cause for remand. If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

In addition section 247, Cr.P.C. contained consequence of non-appearance of the complainant towards complaint, while section 249, Cr.P.C. also inferred power to a court to stop proceedings when there is no complainant. Section 265-L, Cr.P.C. is in addition thereto. It empowered the Advocate General to inform the court on behalf of the Government the intent not to prosecute the accused upon the charge to a court where the case is subjudice. On such request all the proceedings against the accused shall be stopped, with an order of his discharge, but it does not amount to an acquittal, the Presiding Judge is with the authority to record acquittal on acceptance of the request.

5. In the case in hand though the statement was made on behalf of the prosecution to place the file in dormant without any further proceedings, it was for the reasons that the complainant and the eye-witnesses were not available. This was not the intent of the Government as contained in section 265-L, Cr.P.C. In addition section 344, Cr.P.C. empowered a court to postpone or adjourn proceedings before it if a witness is not in attendance or there is some other reasonable cause requiring the adjournment, but this power is with certain restrictions. In exercise of the powers the proceedings could not be adjourned for an indefinite period, as it is till specific time or date. The scheme of law is that an adjournment could be given, but from time to time, that the reason must be in writing, and that the duration it must be for such time as considered reasonable by the court. Thus this adjournment or postponement of the proceedings is for a definite time and period; it could not be for an indefinite period.

6. In the case in hand the trial court adjourned the proceedings for indefinite period, thus acted against the mandate of law. The reason behind passing of the order was that the complainant, and one of the eye-witnesses were involved in crime of murder, and absconding from the law, whether it could be a reason for exercise of the power under section 344, Cr.P.C. was the moot question. Though the named witnesses have direct relevance and bearing on the case, as one is the complainant and the other witnessed the occurrence, but this reason in no way empowered the trial court to adjourn the proceedings for indefinite period. The case cannot be kept pending for the evidence of the persons who were fugitive of law. It is a settled principle of criminal justice that a fugitive from law loses some of his normal rights granted by the law, procedural or substantial; it was the position in the present case also. Thus in the stated circumstances the absence of the witnesses would not mean a reasonable cause to adjourn the case, that too, for an indefinite period. It is also a settled principle of law

that sessions trial once started have to continue until it is completed, this principle was also ignored.

In view of the above discussion the order dated 18th June, 2015 is not sustainable, which is hereby set aside. The trial court is directed to proceed with the matter in accordance with the law. As it is quite an old matter, thus it will be advisable to decide the same preferably within a period of two months.

The petition is disposed of in the above terms.

JK/100/Bal. Petition accepted.

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