P L D 1994 Lahore 459

Before Khalil-ur-Rehman Ramday, J

THE STATE---Petitioner

versus

MUHAMMAD SALEEM alias SEEMA and another---Respondent
Criminal Revision No.362 of 1992, decided on 13th April, 1994,

(a) Criminal Procedure Code (V of 1895)---

----S. 249-A---Penal Code (XLV of 1860), S. 224---Acquittal of accused person on ground that no prosecution witness had been offered to the Trial Court for over one year and that the prosecution appeared to be disinterested in prosecuting the accused persons in question---Legality---Performance on the part of the prosecution and the Police Agency and a disgraceful display of apathy, inefficiency and lack of interest on the part of these two departments in handling prosecution in criminal matters was deprecated by the High Court---Directions were issued to Trial Courts and both Prosecution Agency and Police with regard to criminal trials and service of process therefor---Acquittal was set aside and Trial Court was directed to take up the trial from the stage immediately before the recording of the acquittal and to proceed with the same in accordance with law.

In the present case the offence punishable under section 224, P.P.C. had allegedly been committed by the accused on 13-8-1988. After the completion of investigation the challan reached the trial Court on 19-10-1988. The said accused persons were charged by the Magistrate on 30-10-1988 whereafter, prosecution evidence was summoned for examination. From 30-10-1988, when the prosecution evidence was directed to be produced, till 30-12-1989 when the accused persons were finally acquitted the trial had been fixed on at least 30 dates of hearing and despite issuance of summonses, issuance of warrants and despite personal letters having been addressed by the Magistrate to the S.S.P. of the city not a single prosecution witness had been produced by the prosecution at the trial. The total number of prosecution witnesses in the present case was ten out of whom, seven were police employees posted at one police station of the city at the relevant time; one was a Government doctor and only two persons happened to be private citizens.

This is a shameful performance on the part of the prosecution and the police agency and a disgraceful display of apathy, inefficiency and lack of interest on the part of these two departments in handling prosecution in criminal matters. Such a conduct becomes all the more condemnable when one finds that both the accused persons were not ordinary criminals as each one of them had, at least, ten past criminal cases to his credit which criminal cases included cases of dacoity, theft, attempted murder and Arms Ordinance. It is about time that the Government agencies woke up to discharge the obligations cast on diem and to contribute something positive in the matter of dispensation of justice and not to remain contented just with declaration of their intention to ensure justice for people. This is not the solitary or an exceptional case where such a situation had arisen and one has to pick up the file of any trial in any Criminal Court in the Province to find that such a behaviour on the part of these two agencies has become a rule rather than being an exception.

The trial Courts cannot be allowed to act only as silent spectators (when such a mockery is being made of the administration of justice.

Dispensation of justice is primarily the responsibility cast by law on the Courts. The investigators, the prosecutors and the witnesses are only the instruments provided by law to the Courts for rendering justice. If these tools **and instruments have got** blunted, and the concerned agencies are not willing to do anything in the matter, then the Courts of law have to take steps to chisel them. This might not be a very pleasant duty to perform but **then extraordinary** situations can be corrected only through extraordinary measures.

So far as the legality of the acquittal in question is concerned, the same is based on the ground that no prosecution witnesses had been offered to the learned trial Court for over one year and

that the prosecution, therefore, appeared to be disinterested in prosecuting the accused persons in question.

Administration of justice is the obligation of the Courts of law.. If acquittals were ordinarily allowed to be recorded on the ground of non-production of prosecution witnesses, then the Courts of law would be abdicating their powers, duties and obligations in favour of the process-servers which obviously is not the intention of law nor is the same a norm of justice. Ensuring appearance of witnesses before it is the responsibility of the trial Court. Sections 87, 88 and 90 of the Cr.P.C. as also the relevant provisions of Chapter X of P.P.C. clothe the trial Court with sufficient powers to coerce the attendance of witnesses and to deal with the officials and agencies which neglect the discharge of their duties in the said connection. It might be a very rare case where an acquittal would be recorded in favour of the accused persons on account of non-attendance of the prosecution witnesses and that would be a situation where having exhausted all the remedies and powers available to it, the trial Court, comes to the conclusion that in no case, could the presence of the said witnesses be procured, e.g., the witnesses having left the country or having died. In all other situations of non-appearance of prosecution witnesses, the provisions of section 249, Cr.P.C. would become operative where the trial Court would stop the proceedings and without pronouncing any judgment of acquittal, would release the accused persons if they be in jail and then wait till the efforts of the Court to unearth the witnesses. yield fruit whereafter, the trial would be re-commenced and then concluded in accordance with law. The practice of the trial Courts where the said Courts opt for an easy way-out and acquit the accused under section 249-A, Cr.P.C., is depreciated.

In the circumstances, the trial Courts are directed that in case of any summonses or warrants issued by them remain unanswered, then the S.H.O. of the concerned police station to whom such a process had been issued for service-execution shall be immediately summoned in person and examined on oath to find out the steps taken by him or by the official deputed by him in the compliance of the process. The trial Court shall then identify and record the reason for non-service or non- execution of the process in question and shall then either take further coercive processes for the appearance of the witness in question or if it is found that the fault lay with the police official, then punish him as also the S.H.O. for disobedience of the orders of the trial Court. The trial Courts are equipped with sufficient powers to deal with the delinquents but if at any stage, any trial Court feels handicapped for taking the required action against a delinquent official, then it is always open to the trial Court to make a reference to High Court for necessary action. The trial Courts should stand notified that if it is ever found that non-appearance of witnesses had not been met by the abovementioned exercise, then they shall also be liable for action against them.

The acquittal recorded by the trial Court was set aside. The trial Court was directed to take up the trial from the stage immediately before the recording of the acquittal and to proceed with the same in accordance with law.

(b) Contempt of Curt Act (LXIV of 1976)---

----Ss. 3 R, 4---Criminal trial---Failure of Station House Officer of Police Station to execute processes issued by Courts of law---Explanation of Station House Officers of Police Station being not satisfactory, High Court ordered to issue notice to them to show cause as to why they should not be punished for contempt of Court.

Zaeem-ul-Farooq Malik, Asstt. A.-G. for the State. Ch. M. Ashraf Azeem for Respondents.

ORDER

Through its judgment dated 12-2-1989, a learned Special Court for Speedy Trials at Gujranwala had convicted Muhammad Saleem and Muhammad Khalil under section 392/397, P.P.C and had accordingly imposed sentences upon them. Both these convicts challenged the said conviction and the sentences recorded against them before this Court through Criminal Appeals Nos. 82/89 and No.84/89 respectively, and it was during the course of the hearing of these two appeals that it transpired that the said two persons, namely, Muhammad Saleem and Muhammad Khalil had escaped from police lock-up on 13-8-1988 while they were on physical remand with the Police of Police Station, Model Town of Gujranwala and that a case bearing F.I.R. No.545/88 had been registered against both of them on 13-8-1988 at the abovementioned police station for the alleged

commission of an offence punishable under section 224 of the P.P.C. While hearing the abovementioned appeals, it also came to my notice that a learned M.I.C. at Gujranwala, through a judgment dated 30-12-1989 had acquitted both these persons of the said charge under section 224 of the, P.P.C. I summoned the record of this trial from the Court of the learned Magistrate and after examining the same, issued notices to the said accused persons, namely, Muhammad Saleem and Muhammad Khalil to show cause why the acquittal recorded in their favour by the learned M.LC., of the charge under section 224, P.P.C. through the abovementioned judgment dated 30-12-1989, be not set aside? Since the acquittal had been recorded essentially on the ground of non production of the prosecution witnesses before the learned trial Magistrate, 1 also issued notices to the S.H.O. of P.S. Model Town, Gujranwala and the Prosecutor deputed to assist the learned trial Magistrate in this matter, to show cause why action should not be taken against them for having persistently defaulted in the production of prosecution witnesses before the learned trial Court.

2. Muhammad Saleem and Muhammad Khalil accused have been heard through their learned counsel. Muhammad Siddique and Khushi Muhammad who had remained posted as Inspectors/S.H.Os. at Police Station Model Town, Gujranwala, during the relevant period have submitted their written replies and have been heard. Hafeez-ur-Rehman Inspector (Legal)/Prosecutor who was posted with the learned trial Magistrate has also submitted a written explanation. The Superintendent of Gujranwala Jail has also filed a written reply to explain why the accused persons in question had not been produced before the learned tiral Magistrate on at least ten dates of hearing fixed during their trial.

3. A5 has been mentioned above, the offence punishable under section 224, P.P.C. had allegedly been committed by the accused respondents on 13-8-1988. After the completion of investigation, the challan appears to have reached the learned trial Court on 19-10-1988. The said accused persons were I, charged by the learned trial Magistrate on 30-10-1988 whereafter, prosecution evidence was summoned for examination. From 30-10-1988, when the prosecution evidence was directed to be produced, till 30-12-1989 when the accused persons were finally acquitted the trial had been fixed on at least dates of hearing and despite issuance of summonses, issuance of warrants and despite personal letters having been addressed by the learned trial Magistrate', to the S.S.P. of Gujranwala not a single P.W. had been produced by the prosecution at the trial. It may be mentioned here that the total number of prosecution witnesses in the present case was ten out of whom, seven were police employees posted at P.S. Model Town, Gujranwala at the relevant time; one was a Government doctor and only two persons happened to be private citizens.

4. This is a shameful performance on the part of the prosecution and the' Police Agency and a disgraceful display of apathy, inefficiency and lack oft interest on the part of these two departments in handling prosecution in criminal matters. Such a conduct becomes all the more condemnable when one finds that both these accused persons, namely, Muhammad Saleem and Muhammad Khalil, were not ordinary criminals as each one of them had had, at least, ten past criminal cases to his credit which criminal cases included cases of dacoity, theft, attempted murder and Arms Ordinance. It is about time that the Governmental Agencies woke-up to discharge the obligations cast on them and to contribute something positive in the matter of dispensation of justice and not to remain contented just with declaration of their intention to ensure justice for people. This is not the solitary or an exceptional case where such a situation had arisen and one has to pick up the file of any trial in any criminal Court in the Province to find that such a behaviour on the part of these two agencies has become a rule rather than being an exception. I have, taken notice of such a shocking demonstration of negligence on the part of the prosecution and the Police Departments in an order passed by me in Criminal Miscellaneous No.554/B-94 and have asked the Chief Secretary, the Home Secretary and the Inspector-General of Police to take immediate remedial steps in the matter.

5. Be that as it may, but the trial Courts cannot be allowed to act only as silent spectators when such a mockery is being made of the administration of justice. Dispensation of justice is primarily the responsibility cast by law on the Courts. The Investigators, the Prosecutors and the witnesses are only the instruments provided by law to the Courts for rendering justice. If these tools and instruments have got blunted and the concerned agencies are not willing to do anything in the matter, then the Courts of law have to take steps to chisel them. This might not be a very pleasant duty to perform but then extraordinary situations can be corrected only through extraordinary measures.

6. I have examined the explanations submitted by the S.H.Os. of P.S. Model Town to whom the processes were being addressed by the learned trial Magistrate. The stance taken by them is that the S.H.Os. are very busy people who have to do patrolling, who have to conduct investigations, who have to attend meetings etc., and that in the circumstances it was not possible for them to personally ensure or even supervise execution of the processes issued by the Courts of Law. They further submit that they had deputed an A.S.I. to look after this obligation and that the learned trial Magistrate had never brought negligence in the matter to their notice.

7. The explanations of the said S.H.Os. are obviously not satisfactory. A notice is, therefore, issued to them to show cause why they should not be punished under the Contempt of Court Act for having disobeyed the order of the learned trial Court and having consequently obstructed the course of judicial proceedings. Independent file shall be constructed in respect of these two notices to be issued to Muhammad Siddique and Khushi Muhammad Inspectors of Police which shall now be listed for hearing on 15-5-1994.

8. So fir as the legality of the impugned acquittal in question is p concerned, the same is based on the ground that no prosecution witnesses had been offered to the learned trial Court for over one year and that the prosecution, therefore, appeared to be disinterested in prosecuting the accused persons in question.

9. As has been mentioned above, administration of justice is, the obligation of the Courts of law. If acquittals were ordinarily allowed to be recorded on the ground of non-production of prosecution witnesses, then the Courts of law would be abdicating their powers, duties and obligations in favour of the process-servers which obviously is not the intention of law nor is the same a norm of justice. Ensuring appearance of witnesses before it is the responsibility of the trial Court. Sections 87, 88 and 90 of the Cr.P.C. as also the relevant provisions of Chapter X of P.P.C. clothe the learned trial Courts with sufficient powers to coerce the attendance of witnesses and to deal with the officials and agencies which neglect the discharge of their duties in the said connection. It might be a very rare case where an acquittal would be recorded in favour of the accused persons on account of non-attendance of the prosecution witnesses and that would be a situation where having exhausted all the remedies and powers available to it, the trial Court, comes to the conclusion that in no case, could the presence of the said witnesses be procured, e.g., the witnesses having left the country or having died. In all other situations of non-appearance of prosecution witnesses, the provisions of section 249, Cr.P.C. would become operative where the learned trial Court would stop the proceedings and without pronouncing any judgment of acquittal, would release the accused persons if they be in jail and then wait till the efforts of the Court to unearth the witnesses yield fruit whereafter, the trial would be re-commenced and then concluded in accordance with law. The practice of the learned trial Courts where the said. learned Courts opt for an easy way-out and acquit the accused under section 249-A, Cr.P.C., is deprecated. .

10. In the circumstances, the learned trial Courts are directed that in case any summonses or warrants issued by them remain unanswered, then the S.H.O. of the concerned police station to whom such a process had been issued for service-execution shall be immediately summoned in person arid examined on oath to find out the steps taken by him or by the official deputed by him in the compliance of the process. The learned trial Court shall then identify and record the reasons for non-service or non-execution of the process in question and shall then either take further coercive processes for the appearance of the witness in question or if it is found that the fault lay with the police official then punish him as also the S.H.O. for disobedience of the orders of the trial Court. It may be added here that the learned trial Courts are equipped with sufficient powers to deal with the delinquents but if at any stage, any trial Court feels handicapped for taking the required action against a delinquent official, then it is always open to the learned trial Courts to make a reference to this Court for necessary action. The learned trial Courts should stand notified that if it is ever found that non-appearance of witnesses had not been met by the abovementioned exercise, then they shall also be liable for action against them.

11. Reverting to the case in hand, for reasons abovestated, the impugned' acquittal recorded by the learned trial Court against Muhammad Saleem and Muhammad Khalil accused-respondents, through an order dated 30-12-1989 is set aside. The learned trial Court shall consequently take up the trial from the stage immediately before the recording of the acquittal and shall then proceed with the same in accordance with law.

12. A copy of this order shall be sent to the Superintendent of Police of Gujranwala who shall ensure the service of summons/execution of warrants issued in respect of the prosecution witnesses. A copy of this order shall also be sent to the learned trial Court who shall submit a monthly report of the progress made in the present trial.

13. The Registrar shall send copies of this order to all the District Magistrates in the Province who shall then be responsible for circulating the same to all the Magistrates under their respective control for their guidance and compliance.,

14. The record received from the learned trial Court shall be returned to it.

M.BA/S-467/L Order accordingly