

SUPREME COURT OF INDIA

Selvi J. Jayalalitha

Vs.

State By Deputy Supdt. of Police, Chennai

(K.T. Thomas and R.P. Sethi JJ.)

05.05.2000

ORDER

1. Permission to file Special Leave Petitions is granted.

2. Leave granted.

3. Appellant is the 1st accused in a criminal case now pending before the XIIth Addl. Sessions Judge-II, Chennai. As the prosecution evidence was closed the trial Judge proceeded to question the accused under Section 313 of the CrPC. On completion thereof the trial court posted the case for defence evidence on 29.3.2000. As the appellant did not produce any defence evidence nor presented any list of defence witnesses the trial court posted the case again to 11.4.2000. On that day also the appellant did not produce any defence witness nor any list of witnesses to be examined on the defence side. It was hence posted on the next day i.e. 12.4.2000 for the same purpose. As nothing happened on that day also the trial court chose to close the evidence for defence and posted the case for arguments. In the meanwhile appellant filed an application for recalling some of the witnesses already examined for the prosecution, under Section 311 of the CrPC (hereinafter referred to as 'the Code'). The trial court did not find the necessity for recalling such witnesses for a just decision of the case. The order dismissing the application for recalling prosecution witnesses as well as the order closing the defence evidence had been challenged by the appellant before the High Court of Madras under Section 482 of the Code, a learned Single Judge of the High Court dismissed that petition by the impugned order

4. True, the appellant was given opportunities to present the defence evidence or to produce the list of defence witnesses and the appellant has not availed herself of those opportunities. Yet as a court of Justice we are of the view that one more opportunity can be granted to the appellant for examining the defence witnesses if she proposes to do.

5. Learned Counsel for the appellant submitted that 4 witnesses are to be examined on the defence side for which a list has been produced before us consisting of the following persons:

1. Selvi J Jayalalitha (Accused No. 1)

2. S. Natarajan

3. S. Chandra Mohan

4. K. Vaidhiyanathan, Television Technician

6. The trial court should afford an opportunity to the appellant to examine those witnesses. As the 1st among the witnesses shown in the list is the appellant herself, permission need be granted only if a separate application in that behalf is filed under Section 315 of the Code because it has to be done at the risk of the appellant herself. It is submitted on behalf of the State of Tamil Nadu that the addresses of the witnesses have not been furnished in the list and therefore it would not be possible for the trial court to issue process. The same list of names shall be submitted before the trial court by appellant on 8.5.2000 or at the most on 9.5.2000 and then addresses (as far as could be gathered by the appellant) should also be shown against each of the witnesses shown in the list. It is agreed that summons can be handed over to the Counsel by the appellant as service would be effected without causing any delay in the matter. We permit the trial court to do so. A request has been made on behalf of the appellant that examination of the defence witnesses may not be insisted on before 15th May, 2000. There is nothing unreasonable in the said submission and therefore we express the hope that the trial court will accommodate the said request of the appellant. If, no application is made under Section 315 of the Code the trial court need not wait for that part of the matter.

7. We are also in agreement with the view taken by the High Court that when the trial court is not inclined to exercise the discretion under Section 311 of the Code for recall of the witnesses required by the appellant, there is no warrant for interference with that discretion.

8. With the above observations these appeals are disposed of.