



2024 INSC 229



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).1664-1665 OF 2024
(ARISING OUT OF S.L.P. (CRIMINAL) NO(S).13406-13407/2023)

EKENE GODWIN & ANR.

APPELLANT(S)

VERSUS

STATE OF TAMIL NADU

RESPONDENT(S)

J U D G M E N T

ABHAY S. OKA, J

1. Leave granted. Heard the learned counsel appearing for the appellants and the learned senior counsel appearing for the respondent State.
2. The appellants are being prosecuted for offences punishable under Sections 419 and 420 of the Indian Penal Code, 1860, and Section 66, read with Sections 43(J) and 66D of the Information Technology (Amendment) Act, 2008. The charge sheet has been filed, and the trial has proceeded. By the impugned order, the High Court rejected the appellants' application for regular bail.
3. During the hearing on an earlier date, we were informed that the Trial Court recorded the examination-in-chief of 12 prosecution witnesses (PW-1 to PW-12) one after the other on different dates without recording their cross-examination. Therefore, considering this peculiar procedure followed by the learned trial Judge, we requested the learned trial Judge to submit a report.

4. We have perused the report dated 11th March 2024 of the Trial Court, which records that by an order dated 27th June 2023, a direction was issued by the High Court to complete the trial preferably within a period of four months. Therefore, the charge was framed on 30th May 2023 and from 25th July 2023 to 7th February 2024, evidence of 12 prosecution witnesses was recorded. The report records that the evidence of prosecution witnesses was recorded in the presence of the appellants, but their Advocate was not present as they had not engaged any Advocate.

5. In our view, the Trial Court ought not to have recorded the evidence in this fashion. Before recording the examination-in-chief of the first prosecution witness, after finding that the appellants-accused had not engaged any Advocate, the Trial Court ought to have provided a legal aid Advocate to the appellants-accused so that the evidence of the prosecution witnesses could have been recorded in the presence of the Advocate representing the appellants-accused. The order sheet enclosed with the report does not record that the appellants declined to accept the services of a legal aid lawyer.

6. When the examination-in-chief of a material prosecution witness is being recorded, the presence of the Advocate for the accused is required. He has a right to object to a leading or irrelevant question being asked to the witness. If the trial is conducted in such a manner, an argument of prejudice will be available to the accused. This is a warrant case. In a warrant case, in view of the proviso to the sub-section (3) of Section 242

of the Code of Criminal Procedure, 1973 (for short, "the Cr.PC"), the learned Magistrate, by recording reasons, can permit cross-examination of a witness to be postponed till a particular witness or witnesses are examined. However, in the present case, no such order was passed by the learned Magistrate. The normal rule is that witnesses shall be examined in the order laid down in Section 138 of the Indian Evidence Act, 1872. Sub-section (3) of Section 242 of the Cr.PC is the exception to the rule.

7. The learned Judge seems to have adopted this method only because the High Court had fixed a time-bound schedule for the disposal of the case. He could have always sought an extension of time from the High Court. Therefore, recording only the examination-in-chief of 12 prosecution witnesses without recording cross-examination is contrary to the law.

8. Considering the facts of the case and the nature of the offences alleged against the appellants and also considering the fact that the appellants have been in custody since 8th January 2023, we find that a case is made out for enlarging the appellants on bail, pending the trial subject to stringent terms and conditions including the condition of deposit of the Passports of the appellants with the Trial Court.

9. To avoid any argument of prejudice, we direct the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, to conduct a *de novo* trial by again examining the prosecution witnesses who have been already examined.

10. The learned counsel appearing for the appellants states that a direction may be issued to the Trial Court to provide legal aid to the appellants.

11. Hence, we allow the Civil Appeals by passing the following order:

- i. We direct that the appellants shall be produced before the Trial Court on 27th March 2024 at 10:30 a.m. On that day, the Trial Court will appoint a legal aid Advocate to espouse the cause of the appellants;
- ii. We direct the Trial Court to enlarge the appellants on bail on appropriate stringent terms and conditions, till the conclusion of the trial, after giving an opportunity of being heard to the learned Prosecutor on the terms and conditions of the bail;
- iii. The conditions of bail shall include the condition of the appellants surrendering their Passports before the Trial Court;
- iv. We direct the Trial Court to hold a *de novo* trial by examining the Prosecution Witness Nos.1 to 12; and
- v. Civil Appeals are allowed on the above terms.

.....J.
(ABHAY S.OKA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
MARCH 18, 2024.