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C.M. Armugam Vs. State of Mysore

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Court : Karnataka

Decided On : Mar-28-1961

Reported in : AIR1961Mys198; 1961CriLJ509

Judge : N. Sreenivasa Rau, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 94, 173, 251A, 251A(1), 251A(2), 251A(3), 251A(4), 251A(5), 251A(6), 251A(7), 251A(9), 252, 253, 253(1), 256, 256(1), 257 and 257(1); Indian Penal Code (IPC), 1860 - Sections 163 and 420; Criminal Law (Amendment) Act, 1952 - Sections 6 and 8; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955; Evidence Act, 1872 - Sections 123 and 124

Appeal No. : Criminal Revn. Petn. No. 419 of 1960

Appellant : C.M. Armugam

Respondent : State of Mysore

Advocate for Def. : G. Channappa, Asst. Adv. General

Advocate for Pet/Ap. : V.K. Govindaraju, Adv.

Judgement :
ORDER

1. This revision petition arises from a case in which the petitioners are being prosecuted for offences under Sections 163 and 420, I. P. C. The case is being tried by a Special. Judge under Section 6 of the Criminal Law (Amendment) Act, 1952; under Section 8 cf that Act, the procedure prescribed being that for the trial of warrant cases under the Code of Criminal Procedure. The stage reached in the, case is that charges have been framed against the accused and the prosecution is examining its witnesses.

The accused have not yet entered on their defence. The petitioners (Accused) applied to the Court to summon a witness for the production of certain documents. The learned Judge rejected the application taking the view that the accused were not entitled to make the application until they had entered on their defence.

2. According to the learned Judge Section 251-A, which now regulates the procedure for warrant cases, accords the accused such a right only when that stage is reached and not at any earlier stage and he relies upon Sub-section (9) of that section.

3. In challenging the correctness of this order it is urged for the petitioners that Section 94 Code of Criminal Procedure, invests the Court with full discretion to issue a summons for the production of documents at any stage of an inquiry, trial or other proceeding and that the learned Judge was in error in thinking that his powers were confined to the ambit of Section 251-A(9). On the other hand it is urged by the learned Assistant Advocate-General appearing for the State that Section 94 merely provides the machinery for securing the production of documents under various proceedings and the circumstances under which such machinery is to be employed have to be determined with reference to the provisions dealing with different categories of proceedings and the various stages of such proceedings. Both the sides have referred to some decisions, which, it is seen had to consider the tenability of such an application in cases governed by the Code of Criminal Procedure before its amendment by Act XXVI of 1955.

4. Before the amendment there was no difference in regard to the trial of warrant cases whether the case was instituted on a police report or in any other manner. After the amendment the cases instituted on a police report are wholly governed

by the provisions of the new Section 251-A, while in regard to cases instituted otherwise the procedure remains the same as before. According to that procedure Section 252 provides that the Magistrate shall proceed to hear the complainant and shall summon such persons as are ascertained from the complainant or otherwise to be acquainted with the facts of the case and to be able to give evidence for the prosecution, whose evidence the Court considers necessary.

Under Section 253, if the Court, after taking such evidence and examining the accused, finds that a prima facie case against the accused has not been made out, the Court shall discharge him. If a prima facie case is made out the Court has to frame a charge against the accused. Section 256 provides for the charge being read out and explained to the accused and the accused's plea being taken and if he docs not plead guilty Section 256 provides that the accused shall be required to state whether he wishes to cross-examine any, and, if so, which of the prosecution witnesses who have been examined, that such witnesses shall be recalled for cross-examination and re-examination, that the evidence of any remaining prosecution witnesses shall next be taken and that the accused shall then be called upon to enter upon his defence.

Section 257, which deals with the stage when the accused has entered upon his defence, provides that if the accused applies for the issue of any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of causing vexation or delay or for defeating the ends of justice.

5. In regard to cases instituted on a police report, Section 251-A abridges the procedure by enabling the Court to discharge the accused or to frame a charge on a consideration of the documents placed before him under Section 173 and after giving the prosecution and the accused an opportunity of being heard. No examination of witnesses is contemplated. This is provided for by Sub-sections (1) to (3) of Section 251-A. Sub-sections (4), (5) and (6) deal with the charge being read and explained to the accused, the entering of his plea, convicting the

accused on his plea of guilt and if he does not plead guilty, for fixing a date for the examination of prosecution witnesses.

Sub-section (7) states that on the date so fixed the Court shall proceed to take all such evidence as may be produced in support of the prosecution. It also provides for the deferring of the cross-examination of any witness until any other witness or witnesses have been examined and for recalling any witness for further cross-examination. Sub-section (8) provides that the accused shall then be called upon to enter on his defence and produce any evidence and for the accused putting in his written statement, if any, Then follows Sub-section (9), which is identical in terms with Section 257.

6. It will thus be seen that while in cases instituted on a complaint and not on a police report the prosecution witnesses arc examined before charge under Section 253(1) and the accused, after the charge is framed, is entitled to ask for recalling prosecution witnesses for cross-examination under Section 256(1) and he is further entitled to summon defence witnesses and also to summon prosecution witnesses for cross-examination under Section 257(1), the position is somewhat different in a case instituted on a police report. No question of examining witnesses arises before the framing of a charge.

Hence no question of calling any prosecution witness for further cross-examination can arise before the accused enters on his defence. But the position is the same in both cases after the accused has entered on his defence. The question for consideration is whether in a case like the present one, instituted on a police report, the accused can apply to the Court for the production of documents in the context of the examination of the prosecution witnesses under Sub-section 251-A(7) and whether his right to apply is not confined to a later stage, i.e., when he has entered upon his defence as provided under Sub-section (9).

A similar question would arise in warrant cases instituted on a complaint whether tlie accused could not apply to the Court for the production of documents in the context of the examination of the prosecution witnesses before charge under Section 253, as also in the context of the further cross-examination ot prosecution witnesses, under Section 256 and whether his right is confined only to the later

stage, i.e., after he has entered upon this defence under Section 257. Before the amendment, this represented the position in regard to all cases, whether instituted on a police report or on a complaint.

7. It is this position that it dealt with in the cases cited during the arguments, The learned Assistant Advocate-General has relied upon the decision reported in Yusuff Sahib v. Hayagriva Rao, 1955 Andh WR 409. That was a case in which the Magistrate had called for certain documents at the instance ot the accused before the framing of a charge in a warrant case. It was observed by the learned Judge, after referring to the procedure prescribed for warrant cases in general and to Section 257, Cr. P. C., in particular,

'It is manifest from the aforesaid provisions that the right of the accased to ask for the production ot any document, or, for compelling the attendance of any witnesses, accrues to him only after he is called upon, to enter upon his defence. In the present case though the prosecution evidence was concluded, it is represented to me that the stage has not yet been reached when the accused would be called upon to enter upon his defence. If so, the order made by the Joint Magistrate calling for the production of documents at the instance of the accused was invalid.

Mr. Suryanarayana for the respondents relied upon Section 94 of the Criminal Procedure Code and contends that it confers an overriding power on a Court to compel the production of a document in violation of the other provisions of the Code. I do not read Section 94 in the manner the advocate for the respondent asks me to do. Section 94 can reasonably he reconciled with Section 257 if it be held that Section 94 only confers power upon a Magistrate and Section 257 prescribes the mode of exercise of that power under certain circumstances'.

8. The learned Advocate for the petitioner has relied upon the Full Bench decision of the Sind Judicial Commissioner's Court reported in Mahomed Rahim v. Emperor. AIR 1935 Sind 13 (FB) and the case in Hari Charan v. State, . In the former case the question arose for consideration whether the court, acting under Section 94 Cr. P. C., may not at any stage call for the production of a document at the request of the accused, as the correctness of a previous decision of that Court

reported in Tahilram Lilaram v. Pitamhardas Valab-das, AIR 1914 Sind 135 was doubted.

In that previous decision it was held that the Magistrate should not have entertained the accused's application for the production and inspection of certain documents before a (charge was framed against him, the view of the Court being that the accused's right to call evidence, either witnesses or documents, does not arise until after the charge has been framed and read out to him. No reference was made in the decision to Section 94 Cr. P. C.

In the Full Bench decision after considering the provisions relating to the trial of warrant cases and the scope of Section 94, the view was expressed that Section 257 neither controls nor imposes any limitation on the power of the Court to exercise its discretion in regard to the production of documents under Section 94 Cr. P. C., and that it is no bar to the exercise of that discretion in a trial under the provisions ot Chapter XXI before the trial had reached the stage indicated under Section. 257. This view is endorsed in the decision reported in .

9. It may first of all be stated that though, as mentioned above, there is difference between the procedure in warrant cases instituted on a police report under the amended Code and the procedure applicable to all warrant cases previously, this circumstance makes no essential difference to the question on hand. In a case instituted on a police report no witnesses are examined before a charge is framed and no question of calling any prosecution witnesses for further cross-examination after charge and before the accused enters on his defence can arise. Still under Section 251(A)(7) if the prosecution adduces any evidence in support of its case, the accused has a right to cross-examine those witnesses.

So far as the cases instituted on a complaint are concerned, the same procedure as before con-tinues and if the prosecution examines its witnesses before charge, the accused can exercise the right of further cross-examining all or some of those prosecution witnesses after the framing of the charge. The prosecution can itself examine the remaining prosecution witnesses. The accused has a right to cross-examine them. It is thereafter that he enters upon his defence. The question therefore is whether before the accused enters upon his defence, whether under

Section 251A(9) or under Section 257, it is open to him to apply to the Court for the production of documents.

The view taken in the decision reported in 1955 Andh WR 409 is that the Court cannot entertain such an application until the accused enters on his defence, since it is only at that stage that he gets the right to ask for the issues of process for compelling the attendance of any witnesses or the production of any document or other thing and Section 94 Cr. P. C., merely provides the machinery for securing the production of a document or other thing and does not invest the Court with an independent power of securing the production of a document or other thing.

10. It appears to me that the language of Section 94 Cr. P. C. makes it difficult to accept such a limited construction. Section 94 Cr. P. C. reads as follows:

'(1) Whenever any Court, or in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes ot any investigation, inquiry, trial or other proceeding under this Code by or before such Court or oiiicer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, Sections 123 and 124, or to apply to a letter, postcard, telegram or other document or any parcel or tiling in the custody of the Postal or Telegraph authorities'.

It will be noticed that it does not say that whenever under the provisions of the Code it becomes necessary or desirable to secure the production ot a document or a thing, the Court may issue a summons for its production to the person in

whose possession or power the document or the thing is believed to be. It says that the power to issue a summons for the production of a document or a thing is to be exercised whenever the Court considers that its production is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding.

In other words, the power is available to the Court at every stage of different varieties of proceedings contemplated under the Code, It has also to be noticed that this power is available not only to the Court but also to any officer in charge of a police station: Confining onr attention to the power of the Court, it seems to be clear that the only condition for the exercise of the power is that the production of the document or the thing should be necessary or desirable for purposes of the proceedings and the only restriction is that contained under Subsection (3) which provides that the provisions of the section shall not affect sections 123 and 124 of the Indian Evidence Act or apply to articles in the custody of the Postal or Telegraph authorities.

It may be that it becomes necessary or desirable that a witness should be examined with reference to a document or other thing and when the parties themselves are not in a position to produce the document or the thing, the Court can direct the person believed to be in possession or control of the document or other thing to prduce it. As mentioned above, in cases instituted on a complaint the prosecution examines witnesses in support of its case under Section 252 before charge and under Section 256 after charge, and in a case instituted on a police report the prosecution examines its witnesses after charge under Sub-section (7) of Section 251A.

The examination of any witness comprises his examination-in-chief, Cross-examination and re-examination and all these three may be with reference to documents. It may also be mentioned that Section 251A(7) explicitly contemplates cross-examination of the prosecution witnesses and Section 256(1) expressly provides for the cross-examination and re-examination of the remaining prosecution witnesses, i.e., those other than the witnesses examined before the framing of the charge, apart from the cross-examination of such of the witnesses who have been examined prior to the framing of the charge and whom the

accused wishes to cross-examine.

It may be that the prosecution is not in a posi-tion to produce the document or other thing which is necessary or desirable to produce in the examination of its witnesses and there is no dispute-that the prosecution can seek the Court's aid to secure the production of such documents or things. Can it be reasonably contended that the accused, if he could make out that the production of a document or a thing is necessary or desirable for the purpose of cross-examination, cannot similarly seek the aid of the Court?

Is there anything in principle or reason should prevent the accused from rebutting the prosecution case, even before a charge is framed in cases instituted upon complaints, by an effective cross-examination of the prosecution witnesses with reference to relative documents or things, or for the accused to seek to obviate the need to examine his own witnesses by cross-examining the prosecution witnesses after the framing of the charge with reference to such documents or things? Would it not be in the interests of justice for the Court to exercise-its power under Section 94, Cr. P. C., to such an end? It seems to me that the necessity and desirability contemplated under Section 94 Cr. P. C., are intended. to cover such a contingency. It must, therefore, be held that the Court has power to summon documents at any stage.

11. It is no doubt true that the accused's right to secure the production of any document or other. thing is provided for only under Section 251 A(9) and under Section 257. But there it is a matter of the accused's right. If the accused, after he has entered upon his defence, applies to the Court for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any document or other thing, the Court is bound to issue process unless it finds that the application. is made for the purpose of vexation or delay or for defeating the ends of justice.

In those contingencies, the Court is bound to record the ground for refusal, The Court is also empowered to refuse, if the accused had already an opportunity of cross-examining a witness whose presence he again wants to be secured. In this context, the provisions of Section 256 may also be perused. That section gives the

accused the right to have the prosecution witnesses recalled for further cross-examination and the Court is bound to recall them and no refusal is contemplated, It appears to me that while Section 251-A(9) and Sections 256 and 257 deal with the accused's right at particular stages Section 94 invests the Court with a discretionary power to be exercised in appropriate circumstances at any stage.

It is hardly necessary to say that such a power can be exercised suo moto or it can be invoked by a party to the proceedings. If it is so invoked, it is for the Court to apply its mind and see whether it is necessary and desirable for the purpose of the case at the particular stage to secure the production of a document or other thing. It cannot turn down an application for the production of a document or a thing merely on the ground that the stage tor the accused exercising the right has not arrived. It will thus be seen that if Section 94, Cr. P. C., is read as conferring a discretionary power on the Court and Sections 251A(9), 256 and 257 are read as conferring rights on the accused, no inconsistency arises between Section 94, Cr. P. C., and the other provisions.

12. In the case on hand the learned Judge has dismissed the accused's application on the ground that it is not maintainable at this stage, and consequently has not applied his mind to the question whether it was desirable or necessary to secure the production o the documents in question.

13. The order of the Court below is accordingly set aside and it is directed to consider the application on its merits.

14. Order accordingly.

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