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J. Jaikumar Vs. Yogesh Lemichwal

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Court : Karnataka

Decided On : Dec-11-1997

Reported in : ILR1998KAR494

Judge : S.R. Bannurmath, J.

Acts : High Court of Karnataka Rules, 1959 - Rule 2; Oaths Act, 1969 - Sections 4(2) and 6; Code of Criminal Procedure (CrPC) , 1973 - Sections 315; Karnataka Criminal Rules of Practice, 1968 - Rule 2; Constitution of India - Article 227; Code of Civil Procedure (CPC), 1908 - Sections 5, 122 and 129; Mysore Criminal Rules of Practice, 1968

Appeal No. : Criminal Revision Petition No. 550 of 1997

Appellant : J. Jaikumar

Respondent : Yogesh Lemichwal

Advocate for Def. : State Public Prosecutor

Advocate for Pet/Ap. : Sri S.G. Bhagavan, Adv.

Judgement :
ORDER

1. This matter is posted for orders on office objection regarding the requirement of filing affidavit in support of the interim application in criminal revision petition filed

in the High Court as required under Rule 2 of Chapter X of the Karnataka High Court Rules, 1959 (hereinafter called 'the Rules').

2. Learned Counsel for the petitioner submits that the objection raised by the office is not maintainable as the petitioner being an accused, he cannot be compelled to swear. In view of the provisions of the Oaths Act, 1969 (hereinafter called the Act), no oath can be administered to the accused and as such there is a clear bar for filing of affidavit in criminal matters. As similar type of objection has been raised in many of the criminal cases and the same explanation is given, in order to settle the controversy, I requested the Members of the Bar to address arguments on this point. Sri S.G. Bhagavan, learned Senior Counsel, leading the arguments contended that as per Section 4(2) of the Act no oath can be administered to the accused in the criminal proceedings. Elaborating his arguments, he contended that criminal revision petitions or criminal appeals are nothing but the continuations of criminal proceedings and as such the said bar under Section 4(2) of the Act operates and, therefore, the office cannot insist upon filing of affidavit in support of interim applications filed in the criminal proceedings in thisCourt. The second limb of the argument of the learned Counsel for the petitioners is that in view of the specific rules, viz., the Mysore Criminal Rules of Practice, 1968 (hereinafter referred to as the 1968 Criminal Rules), the present insistence of the office on the requirement of Rule 2 of Chapter X of the Rules is erroneous, as there is no requirement under the rules to file affidavit in the criminal proceedings. It is further contended that, when the specific Criminal Rules have been enacted as long back as in 1968, the High Court Rules have no application so far as criminal proceedings are concerned. It is also contended that the rules are promulgated in exercise of the powers conferred under Article 227 of the Constitution of India, and in view of Sections 122 and 129 of the Code of Civil Procedure, in the absence of any mention of the Criminal Procedure Code in the preamble of the rules it has to be held that the said rules (High Court Rules) are framed only for the purpose of civil matters and not for criminal cases.

3. In order to appreciate this contention, it is necessary to look into various enactments. The Act (the Oaths Act) is enacted for the purpose of consolidating the law relating to judicial oaths and for certain other purposes. The Act consists of

only 9 sections and the relevant provisions for this purpose is Section 4. Section 4 of the Act reads thus:

'4. Oaths or affirmations to be made by witnesses, interpreters and jurors.--(1) Oaths or affirmations shall be made by the following persons, namely.-

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation;the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties'.

Reading of Section 4 of the Act makes it clear that sub-clause (1) of this section states as to whom oath shall be administered, viz., (1) all witnesses who may be examined or required to give evidence by or before any Court or the person having by law or consent of parties authority to examine such person or to receive evidence; (2) interpreters of questions put to and evidence given by witnesses and (3) jurors.

4. The proviso to Section 4(1) of the Act provides that while examining any witness who is a child under 12 years the Court or person having the authority to examine such witness has to form an opinion as to whether the child understands the nature of oath or affirmation. It is further provided that even in case of absence of oath or affirmation administered to such a minor, his evidence shall not be rendered as inadmissible. Thus sub-section (1) of Section 4 of the Act makes it clear that oath administration process is in respect of either witnesses who are being examined before the Court or to any interpreter who assists the Court when the witness does not understand the language or jurors (Jury system not in vague intent).

5. Sub-section (2) of Section 4 of the Act states that it is not lawful to administer oath or affirmation to an accused person in a criminal proceeding unless he is examined as a witness for the defence or to any person who is the official interpreter of any Court.

6. Section 6 of the Act prescribes the forms as given in the schedule for administering oath or affirmation.

7. By reading of the provisions of the Act it is clear that the same is enacted for the purpose of administering oath to a witness or an interpreter to be examined in the Court. The specific bar under Section 4(2) of the Act is for administering oath to an accused person in a criminal proceeding, i.e., trial only, and the specific bar is that an accused should not be administered oath unless he himself is a defence witness. The very object of this prohibition appears to be based on well founded criminal jurisprudence that accused cannot be forced to make any incriminatory statement on oath which would prejudice his defence. Under the Indian system of criminal jurisprudence in the criminal proceedings the burden of proof is exclusively on the prosecution except where the law creates a specific exception. In our system the accused need not enter into box to give any evidence either in support of his case or defence. The prosecution stands solely on the evidence adduced by it. Even if the accused is silent there is no presumption or adverse inference drawn against him, as the sole burden of proof is on the prosecution. However, if any accused wants to examine himself as defence witness, then the

law prescribes under Section 4(2) of the Act that he can be administered oath as he assumes the character of a normal witness. Even under Section 315, Criminal Procedure Code, any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disprove of the charges made against him or any person charged together with him at the same trial. Thus, reading of the provisions of Section 315, Criminal Procedure Code, along with Section 4(2) of the Act, it is clear that the bar created against the administration of oath or affirmation to an accused is only in a criminal trial. The scope of the words 'Criminal Proceedings' cannot be extended to filing of affidavits in support of interim applications in revisions or appeals. As the object of Section 4(2) of the Act read with Section 315, Criminal Procedure Code is clear as to prevent compulsion to an accused to take oath unless he wants to become a witness for himself. As noted by me earlier, under Section 4(2) of the Act specifically is in respect of administration of oath only in respect of 3 Categories of persons, viz., (1) witness, (2) interpreters and (3) jurors and the exception for an accused who is defence witness indicates the meaning of 'criminal proceedings' as only criminal trial. So far as the affidavits in criminal appeals and petitions are concerned are not governed by Section 4 of the Act.

8. So far as the contention of the learned Counsel that in view of the existence of Mysore Criminal Rules of Practice, 1968, which is a special enactment, the High Court Act and the rules cannot be enforced is concerned, the same is also not a correct view. By looking into the aims and objects and various provisions of the Mysore Criminal Rules of Practice it is apparent that these rules have been framed for the purpose of having uniformity of procedure in respect of subordinate Courts. Under the said 1968 Criminal Rules especially Rule 2(d) 'Court' means the Court of Session or the Magistrate Court and as these rules are framed in exercise of the jurisdiction under Article 227 of the Constitution of India by the High Court itself for the guidance of all Criminal Courts, viz., Sessions Court and the Magistrate Court, and in the absence of inclusion of High Court in these rules it is clear that the procedure and the provisions under the 1968 Criminal Rules are not at all attracted to the criminal proceedings in the High Court. In my opinion, the High Court Act and the Rules are framed exclusively for the purpose of procedure restricting the operation of the same only to the cases filed in the High Court and

as such it is this Act and the Rules framed thereunder which prevail and not the 1968 Criminal Rules (Mysore Criminal Rules of Practice).

9. Further, it has to be seen that the requirement under Chapter X of the High Court Rules is made applicable also to the criminal cases like the criminal petitions, criminal appeals and criminal revision petitions in the High Court. The object of requiring filing of affidavit of the person approaching the High Court in these criminal cases is to bind him on oath or affirmation as to the contents of such application like the affidavit regarding explanation of delay, affidavit praying for interim order, etc. By no stretch of imagination it can be held that by swearing to such affidavit the accused person is made to give a statement on oath amounting to incriminatory statement regarding the crime with which he has been charged or has been found guilty by the Courts below. In view of these, I do not think that the contentions raised by the Counsel for the petitioners are maintainable.

10. In view of these findings, the objection raised by the office requiring an affidavit to be accompanied with interlocutory application under Chapter X of the Rules (High Court Rules) is upheld.

11. Petitioner in this petition is directed to file the affidavit as required within 2 weeks.

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