

**State of Mysore Vs. Ramu B.**

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**SooperKanoon Citation :** [sooperkanoon.com/377953](http://sooperkanoon.com/377953)

**Court :** Karnataka

**Decided On :** Nov-03-1972

**Reported in :** 1973CriLJ1257; (1973)1MysLJ41

**Judge :** Venkataswami, J.

**Appellant :** State of Mysore

**Respondent :** Ramu B.

**Judgement :**

ORDER

**Venkataswami, J.**

1. This petition by the State is directed against an order made in C. C No. 1683 of 1971 by the judicial Magistrate, First Class (II Court). Bangalore City The order is to the following effect:

Accused present. No witnesses are 'kept present despite the directions of the Court..... The Public Prosecutor files a memo seeking summons to C. Ws. 1 and 2 at this stage stating that they are not amenable to police process. His request is not genuine and is rejected.

The case is coming up for evidence since long and no witnesses are secured till today.

Hence prosecution case is closed for lethargy. For orders, call on 29-1-1972.

2. Before the date of the above order the learned Magistrate, on 10-12-1971, after noting that the summonses issued to C.Ws. 8, 9 and 15 had been returned unserved directed the prosecution to take necessary steps for securing the witnesses on the next day.

3. It is clear from the record that no attempt has been made by the Court to take such coercive steps as were open to it to cause the presence of the witnesses concerned in the case. It seems to me that having regard to the provisions of Sub-section (7) of Section 251-A of the Cr.PC the entire responsibility of production of the witnesses cannot be saddled on the prosecution. A duty is also imposed upon the 'Court for enforcing attendance of witnesses by the processes provided in the Code. The Courts are not powerless when the parties fail to produce witnesses. In this view, it was the duty of the Court, in the instant case, to have issued coercive processes if the prosecution had failed to produce the witnesses as directed on 10-12-1971.

4. That such is the position is clear from the decision of a Division Bench of this Court in *State of Mysore v. N. G. Narasimhegowda* (1964} 2 Mys LJ 241 : (1965-2 Cri LJ 48) that:

Having once issued summons to secure attendance of witnesses, it was the duty of the Magistrate to have enquired into the cause of non-service or non-return of summons and to have taken over steps as were necessary in the circumstances of the case to secure the attendance of witnesses particularly- when there was no material before him to show that there had been any remissness on the part of the prosecuting agency.

The order impugned herein, therefore, is clearly unsustainable.

5. In the result, this petition succeeds and the order made by the learned Magistrate on 18-1-1972 is set aside. Consequently, he is directed to take the case on file and proceed with the further enquiry in accordance with law and in the light of the observations made herein.

