

K. Subba Rao Etc. Vs. State

K. Subba Rao Etc. Vs. State

SooperKanoon Citation : sooperkanoon.com/378018

Court : Karnataka

Decided On : Jul-05-1978

Reported in : 1979CriLJ369

Judge : M.S. Nesargi, J.

Appellant : K. Subba Rao Etc.

Respondent : State

Judgement :

ORDER

M.S. Nesargi, J.

1. These petitions have come up for admission and orders on I. A. I. filed in both the cases.
2. The petitions are admitted and by consent of advocates on both sides, they are taken up for final hearing.
3. As common question of law arises in both these petitions, they are disposed of by a common order.
4. The petitioner in criminal revision petition No. 247 of 1978 was the accused in C. C. No. 915 of 1976, in the court of the Metropolitan Magistrate (III Court), Bangalore City. The petitioner in criminal revision petition No. 248 of 1978 was the

accused in C. C. No. 1304 of 1976 in the same court.

5. On 25-6-1976, Sri J. Joseph, advocate filed his memo of appearance on behalf of the petitioner in criminal revision petition No. 247 of 1978 and got him enlarged on bail. On 24-6-1978 one witness for the prosecution was present. The petitioner in criminal revision petition No. 247 of 1978 was not present and Sri Joseph filed an application under Section 317 of the Code of Criminal Procedure praying for dispensation of the attendance of the said petitioner and requesting to proceed with the trial in the absence of the said petitioner. The learned Magistrate passed the following order :

C.W. 8 present. Since accused is absent C. W. 8 cannot be examined. Sri J. J. files application u/s. 317 Cr.P.C. No vakalath is filed. The witness is present exemption cannot be granted. Hail is cancelled. Issue N. B. W. to accused by 6-7-78. Issue fresh summons to C. Ws. 8 and 12....

This is the order challenged in criminal revision petition No. 247 of 1978.

6. In criminal revision petition No. 248 of 1978, Sri Joseph, the learned advocate filed his memo of appearance on behalf of the said petitioner and two others on 30-8-1976 and got them enlarged on bail. On 25-6-1978, the petitioner was absent. C. W. 3 was present. Sri Joseph filed an application under Section 317 of the Code of Criminal Procedure praying for dispensation of the attendance of the petitioner and requesting the court to proceed with the trial in his absence. The learned Magistrate passed the following order:

A-1 to A-3 absent. C. W. 3 present, C.W. 2 served and absent. Sri J, J. files application u/s. 317 Cri. P. C. for exempting A-1 to A-3 from appearance. At this stage A4 present. Sri J. J. submits that the other accused are to arrive by bus and the matter may be taken up at later stage. When the case was called at 12-30 p. m., again only A-2 appeared in Court with A-1, C W.-2 is also present. It is 1976 matter. Sri J. J., has not filed Vakalath for accused persons. Hence, C- Ws. 2 and 3 cannot be examined. There is no reason for granting exemption to A-3. Added on to it Sri J. J. who has filed the application is not holding special vakalath for A-3. Hence the application for exemption is rejected. The bail of A-3 cancelled. Issue

notice to his surety and N. B. W., against him. Bind over C. W. 2 and C. W. 3. call on 7-7-78.

7. A-3 mentioned in the afore narrated order is the petitioner in criminal revision petition No. 248 of 1978.

8. When it was pointed out to Sri Joseph that the orders impugned will fall within the ambit of interlocutory orders mentioned in Section 397 (2) of the Code of Criminal Procedure, he submitted that this Court may exercise its inherent powers under Section 482 of the Code of Criminal Procedure and dispose of these matters as the orders in question amount to abuse of process of Court in view of the reasoning of the learned Magistrate that a vakalath or a special vakalath must be filed before invoking the provisions of Section 317 of the Code of Criminal Procedure.

9. Sri Joseph argued that the question involved in these two petitions arises almost daily in the courts of the Magistrates and as there is no decision of this Court covering this aspect of the matter, the advocates and accused are facing great difficulty. In support of his contention that no vakalath is necessary to be filed when a pleader or an advocate represents for an accused in a criminal case, he placed reliance on the decision in *The State of Madhya Pradesh v. Lohra* (1975 Cri LJ 1808) (Madh Pra). It has been held therein that no vakalathnama is necessary for pleading and acting in criminal proceedings and advocate's own declaration of his being authorised by accused is sufficient.

10. Though the order in criminal revision petition No. 247 of 1978 does not in so many words make it appear that because Sri Joseph had not filed a vakalathnama on behalf of the petitioner therein, the Magistrate found himself unable to grant exemption under Section 317 of the Code of Criminal Procedure, the order impugned in criminal revision petition No, 248 of 1978 makes this fact abundantly clear because the learned Magistrate has specifically observed that as Sri Joseph did not hold a special vakalathnama for the petitioner therein, no exemption could be granted. Section 317 of the Code of Criminal Procedure, 1973 reads as follows :

317 (1) . At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

11. Now the question is whether an advocate or a pleader appearing on behalf of accused in a criminal case in the court of the Magistrate is or is not in law required to file a vakalatnama.

Rule 6 in Chapter V of the Karnataka Criminal Rules of Practice, 1968 reads as follows :

6 (1) Every pleader as defined under Section 4 (r) of the Code appearing for the prosecution in any criminal proceedings other than criminal appeals shall file in Court a vakalatnama from his client authorising him so to appear. In all criminal appeals such pleader may file a memorandum of appearance instead of a vakalatnama.

(2) Every such pleader defending an accused person in any criminal proceedings in any Court shall file a memorandum of appearance containing a declaration that he has been duly instructed to appear by or on behalf of the party whom he claims to represent.

12. A plain reading of the aforementioned Sub-rule (2) shows that a memorandum of appearance containing a declaration shall be filed by a pleader defending an accused person. Sub-rule (2) is in contrast to Sub-rule (1) because Sub-rule (1) provides that a pleader appearing for the prosecution in any criminal proceedings

other than criminal appeal, shall file a vakalathnama from his client authorising him so to appear and in all criminal appeals such pleader may file a memorandum of appearance instead of vakalathnama.

13. What is clear from the above is that if a pleader or an advocate appears to conduct prosecution in a trial court, he has got to file a vakalatnama and if he appears in criminal appeals, he may file a memorandum of appearance, while if a pleader or an advocate appears on behalf of an accused, he shall file a memorandum of appearance containing a declaration. Therefore, I have no doubt in my mind that filing of a vakalatnama on behalf of an accused is dispensed with and filing of a memorandum of appearance containing declaration, by a pleader that he has been duly instructed to appear by or on behalf of the accused party whom he claims to represent, shall be done.

14. This rule appears to have been overlooked by the learned Magistrate while giving his reasoning that a vakalatnama or a special vakalatnama was not held by Sri Joseph in these two petitions and therefore exemption could not be granted.

15. It may be made clear that these two petitions are being disposed of in exercise of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to prevent the abuse of process of court as, in my opinion, the orders in question are hit by Section 397 (8) of the Code of Criminal Procedure.

16. In the result, these two petition are allowed and the orders impugned are set aside. The learned Magistrate is directed to consider the applications filed under Section S17 of the Code of Criminal Procedure on merit mod dispose of the same.