

Mohd. Suleman Vs. the State

Mohd. Suleman Vs. the State

SooperKanoon Citation : sooperkanoon.com/423724

Court : Andhra Pradesh

Decided On : Sep-24-1954

Reported in : 1955CriLJ956

Judge : Palnitkar and; Siadat Ali Khan, JJ.

Appellant : Mohd. Suleman

Respondent : The State

Judgement :

ORDER

1. Heard arguments of the parties. We are of the opinion that the trial in this case has been vitiated on account of material irregularity.

The revision petitioner was charged Under Section 409, IPC for criminal misappropriation. The evidence for the prosecution was recorded by the Magistrate after which the Magistrate asked the accused whether he wishes to cross-examine the witnesses. The accused stated that he would do so and requested for time to engage a pleader for that purpose. The Magistrate refused to give time and closed the case and decided the same on merits.

The learned Counsel for revision petitioner argues that Under Section 256, Cr.PC it was the duty of the Magistrate to grant the accused an adjournment so that the witnesses may be cross-examined at the next hearing of the case. We are of the opinion that there is much force in the argument. The learned Government

Advocate Shri K. Srinivasa Raghava Chari argues that Under Section 256 if the Magistrate for reasons to be recorded in writing so thinks fit he may ask the accused to cross-examine, the witnesses forthwith. We do not find any such order on the record in this case, that the Magistrate wanted to proceed with the case forthwith. Under the circumstances, there has been a clear contravention of the mandatory provisions of Section 256, Cr.PC

We are of the opinion that the case must go back to the Court of the Magistrate to be tried from that stage giving time to the accused to cross-examine the prosecution witnesses in compliance with Section 256, Criminal P. C. We are fortified in our view by the case reported in - Tirllok v. Emperor' AIR 1927 All 660 (A) in which it has been held that the accused were entitled to an opportunity of cross-examining the prosecution witnesses in accordance with the law. The learned Sessions Judge did not discuss this question at all, probably it was not raised before him.

2. We therefore set aside the conviction and the sentence passed by the two lower courts and direct that the accused be given an opportunity to cross-examine the prosecution witnesses as above and dispose of the case according to law.

3. This order will govern the criminal revision No. 255/54 in which the same question is involved.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com