

In Re: Dr. Raghotham

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Court : Andhra Pradesh

Decided On : Aug-05-1961

Reported in : AIR1963AP362; 1963CriLJ253

Judge : Jaganmohan Reddy, ;Narsimham and ;Sharfuddin Ahmad, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 94, 251A, 251A(9) and 257

Appeal No. : Criminal Revn. Case No. 511 of 1961 and Criminal Revn. Petn. No. 454 of 1961

Appellant : In Re: Dr. Raghotham

Advocate for Def. : K. Somakonda Reddy for Public Prosecutor

Advocate for Pet/Ap. : S.B. Dixit, Adv.

Judgement :

Jaganmohan Reddy, J.

1. The question that is referred to us by Sharfuddin Ahmed J. is whether the powers conferred on the Court by Section 94 of the Code of Criminal Procedure to summon witnesses and documents etc. could only be exercised as contemplated under Section 251A after the charge is framed.

2. In order to appreciate this question It is necessary to state a few relevant facts. The petitioner herein was charged for an offence punishable under Section 408 I.P.C. for embezzlement of certain amounts entrusted to him in his capacity as an officer-in-charge of a maternity home, during the course of the enquiry before the IVth City Magistrate, Hyderabad, the petitioner filed an application before turn for summoning certain records from the Court of the District Magistrate, which, according to him, would show trial a prosecution launched on a previous occasion in respect of the very amounts had been withdrawn against him and that as he had been acquitted of the said charge, no charge could be framed in respect of the same amount or part thereof for a second time.

The Magistrate, while coming to the conclusion that was desirable to summon those records, nonetheless felt bound by a decision of this Court in Yousoff Sahib v. Hayagriva Rao, 1955 Andh LT (Cri) 182 and rejected the petition in the view that the powers under Section 34 are controlled by those contained in Section 251-A and that the stage at which the documents could be summoned would only arise after the framing of the charge. Our learned brother, Sharfuddin Ahmed J. while expressing disagreement with the view expressed by Subbarao C.J. (as he then was) in the above case, referred the matter to a Bench for a fuller consideration.

3. Before we refer to the relevant authorities, it would be appropriate to read the two relevant provisions and consider the question ex facie on the language of the provisions themselves. Section 94 occurs in Chapter VII which is embodied in Part III General Provisions, and it deals with processes to compel the production of documents and other movable property, and for the discovery of persons wrongfully confined. Omitting the portions which are not relevant, it is in the following words:

'(1) Whenever any Court, or 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 of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, of 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) xx xx xx xx xx (3) xx xx xx xx xx'

A perusal of the aforesaid provision would indicate that the power to summon documents etc. conferred upon the Court or an officer in charge of the police station is to enable any investigation, inquiry, trial or other proceeding. It is therefore obvious that when a general power such as that in the contemplation of the section is being conferred not only on the Court but also on the officer in charge of a police station, it is not controlled or limited by any specific words unless it can be said that any other provisions of the Code specifically control, regulate or impose limitations on the exercise of this power. Two relevant provisions which deal with this aspect of the matter are those contained in Sections 251A (9) and 257 Cr.P.C. These two provisions are contained in Chapter XXI relating to the trial of warrant cases by Magistrates. The first provision deals with the procedure to be adopted in cases instituted on a police report, while Section 257 deals with the procedure to be adopted in cases instituted otherwise than on a police report.

Section 251-A, which has been amended by the 1955 Criminal Procedure Amendment Act, lays down a self-contained procedure for the trial of warrant cases on police report. It prescribes that when the accused appears or is brought before a Magistrate in any case instituted on a police report, the Magistrate should satisfy himself that the documents referred to in Section 173 have been furnished to the accused and that upon a consideration of all the documents referred to therein and on making such examination, if any, of the accused, such Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard the Magistrate considers the charge against the accused to be groundless, he shall discharge him. But if he considers that there is ground for presuming that the accused had committed an offence triable under that Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. The other provisions relate to the reading of the charge to the accused, recording the plea of the accused and calling upon the accused to enter upon his defence, etc.

Sub-section (9) of Section 251-A deals with the summoning of witnesses and issuing of processes and is as follows:

'If the accused, after he has entered upon his defence, applies to the Magistrate to issue 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 vexation or delay or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witnesses after the charge is framed, the attendance of such witness shall not be compelled under this section,' unless the Magistrate is satisfied that it is necessary for the purpose of justice. The other provisions of Section 251-A deal with the Magistrate's power in summoning witnesses with or without requiring any reasonable expenses being deposited in court. Section 257 is exactly in similar terms to Section 251-A (9) and therefore it is not necessary to extract that provision here.

4. It appears clear to us from a reading of these two provisions that the right requiring the summoning of witnesses or production of documents is a right given to the accused after a charge has been framed against him and he has entered upon his defence; and where the accused exercises such a right, the Court is empowered to summon the witnesses or the documents with or without requiring the deposit of any reasonable expenses for the summoning of those witnesses or documents as the case may be. This has obviously no reference to the general powers vested in the Court for summoning witnesses and documents which can be done even by an officer in charge of the Police station during an investigation. We may also notice an analogous provision in Section 165 of the Evidence Act, which provides that 'the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall

be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given to any such question; xx'. These provisions which empower the Courts to summon witnesses or to produce documents or things are conferred for the purposes of enabling the Court to act in furtherance of or in the interests of justice during the course of an investigation, enquiry or trial. This power has not been limited, as we have already observed, by any of the provisions contained in Section 251-A (9) or 257 Cr.P.C.

The specific right vested in the accused to require the Court to summon the production of documents or to summon witnesses is not inconsistent with the general right conferred on the Court by Section 94. Nor is there any indication that that right has been controlled or limited or regulated by these provisions. A reading of these provisions prima facie therefore inclines us to the view that the court has a power if it finds that the summoning of any document is desirable or is in the interests of justice, to exercise that power under Section 94 without having to wait for a charge being framed.

The word 'whenever' with which Section 94 begins if given its natural meaning, would indicate that every time when the Court finds it necessary or desirable to act upon that provision it is empowered to do so. There may be instances where the Court even during the inquiry, may feel it necessary to summon documents, which, as for instance, where an accused who wants to take up the plea that he had been acquitted of the same charge and that he cannot be tried again, under the provisions of Sec. 403 Cr.P.C. requests the Court to summon the relevant orders or judgment, the Court has to summon for them, the accused can at any time bring it to the notice of the Court and the Court need not wait until the framing of the charge to accept the plea of *autre fois acquit*.

It appears that in this case, however, the accused was not in fact acquitted, but on the first occasion after a period of 21/2 years the police voluntarily requested the then District Magistrate to close the case and the matter was closed on 17-8-1956; and on the second occasion, he was arrested on 27-8-1958 in connection with the same matter and was discharged by the Court on 5-2-1959. These facts were not

properly represented Before our learned brother who was under the impression that the accused was once acquitted. Be that as it may, the learned Magistrate having come to the conclusion that the summoning of certain documents is desirable in the interests of justice, felt that he had not the power until he framed a charge having regard to the judgment of Subbarao, C.J. above referred to.

The judgment of Subbarao, C.J. in 1955 Andh LT (Cri) 182, with great respect, in our opinion does not take into consideration the difference between the general powers vested upon the Court and the right of the accused which accrues to him to summon documents alter the framing of the charge. This aspect of the matter was not considered therein. In that case, though the prosecution evidence was concluded, no charge was framed; but the Magistrate Had ordered the calling of three documents at the instance of the accused. In so far as the right of the accused to ask for the calling of such documents is concerned, he had no such right at that stage, and the judgment of Subbarao C.J. cannot on that ground be assailed.

But in this case, while the accused may have applied for the production of the documents the Magistrate felt that the production of the documents was desirable in the interests of justice. Once the Magistrate had come to trial conclusion, he ought not to have refused to call for them, because he had ample powers under Section 94 to summon them. If the judgment of Subbarao C.J. is merely confined to the stage at which the accused could call for the documents, and that, on the facts of that case, he had no right to ask the Court to summon the documents and the Court had no power to summon them at his instance before the stage specified in Section 251-A (9) and 257 was reached, there would be no difficulty. But at page 184 dealing with the argument of Mr. Suryanarayana for the respondent, who contended that Section 94 confers an overriding power on a Court to compel the production of a document in violation of the other provisions of the Code, the learned Chief Justice observed as follows:

'I do not read Section 94 in the manner the advocate for the respondent asks me to do. Section 94 can reasonably be 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.'

With great respect, Section 94 being a general power which can be exercised by a Court whenever occasion arises, would also include cases where even the accused applies for the production of documents. The power contained in Section 257 or 251-A (9) cannot strictly be said to be the only mode of the exercise of the power under Section 94, while no doubt it is one of the occasions when it exercises its power to summon the documents. If so understood, there will be no difficulty in giving free play for the exercise of the power by the Magistrate under Section 94.

As observed by Ameer Ali, J, in *Nizam of Hyderabad v. A.M. Jacob*, ILR 19 Cal 52 '.....the words of Section 94 are very large, and it seems advisedly so.' In *Muhammad Rahim v. Emperor*, AIR 1935 Sind 13 at p. 19 a Full Bench of the Sind High Court dealing with a similar question observed:

'In our opinion. Section 257, Criminal Procedure Code, neither controls nor imposes any limitations on the power of a Court to exercise its discretion in using the machinery provided by Section 94 Cr.P.C. It is no bar to the exercise of that discretion in a trial under the provisions of Chapter XXI, before the trial has reached the stage indicated by Section 257.'

It was further observed:

'Under Section 94, any party to an inquiry or trial or other proceeding under the Code may at any stage apply to the Court to call for the production of a document or other thing and is entitled to its production if he satisfies the Court that such production is necessary or desirable for the purposes of such inquiry, trial or other proceeding. Under Section 257, Criminal Procedure Code, an accused person is entitled at the particular stage of his trial specified in the section to apply to the Court to call for the production, of any document or thing and the Court shall cause such production unless it considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.'

In *C.M. Armugam v. State of Mysore*, AIR 1961 Mys 198, N. Sreenivasa Rao J., (as he then was) after considering all the several aspects of the matter and the differences between the procedure prescribed in both under Sections 251-A and 257, expressed the view that the limited construction placed on the language of Section 94 by Subbarao, C. J., was difficult to accept, and observed:

'.....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 our 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 Sub-section (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.'

The learned Judge thereafter went to examine the other contingencies in which the power under Section 94 may be appropriately used. To a similar effect is the decision in *Haricharan v. State*, . It appears to us that the conditions for the exercise of the powers under Section 257 or 251-A (9) are those prescribed therein and if those conditions are not existing, the Court cannot refuse the application of the accused; while under Section 94, the Court has power at all times during the course of the enquiry or trial to exercise that power if it finds necessary or desirable in the interests of justice to do so. Even where, before the stage of the framing of the charge, an accused applies for summoning any document, and the Court comes to the conclusion that in the interests of Justice it is desirable to do so, it can exercise that power. We find no difficulty in arriving at that conclusion.

5. The reference is answered accordingly.

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