In Re: Barkat

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SooperKanoon Citation : sooperkanoon.com/447387

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1897)ILR19All200

Judge : Blair, J.

Appellant : In Re: Barkat

Judgement :

Blair, J.

1. This is a petition for the revision of an order of the Sessions Judge of Ghazipur, directing the prosecution of the applicant for an offence under Section 193 of the Indian Penal code. The applicant had been put upon his trial before a Magistrate of the first class for an offence constituted by Section 323 of the Indian Penal Code. He had been convicted and sentenced to pay a fine of Rs. 25, or, in default of such payment, to be imprisoned for three months. Application was made by him to the Sessions Judge to revise this sentence and conviction. This application was to some extent based upon the allegation that the Magistrate, who tried the case, had refused to summon Witnesses whom the applicant desired to call in his defence. That allegation in the petition was supported by an affidavit sworn by the applicant. The Sessions Judge found that the allegations of that affidavit were false to the knowledge of its maker, and therefore made the order now sought to be revised.

2. Mr. Muhammad Ishaq for the applicant contends that such an order is bad in law, inasmuch as the applicant, who made the affidavit, occupied at the time of such making the status of an accused person. The object, he contended, of the application and the affidavit were to obtain a reversal or modification of the conviction and sentence. It is not disputed that the applicant was incapable in law of being examined, otherwise than under the circumstances and restrictions set forth in Section 3421 of the Code of Criminal Procedure, upon-the original hearing of the case against him, He could not have been called as a witness, either by the prosecution to establish their case, or by himself in his own defence. It is argued that the reason of such disqualification extends to proceedings outside the original trial which may be taken for the purpose of reversing or modifying its result. I confess, I myself am unable to see why the reasons for which the Legislature excluded an accused person from giving evidence upon an original trial should not operate with equal force to preclude his competency as a witness in the appeal from that trial, and I am referred to a case Queen-Empress v. Subhayya I.L.R. 12 Mad. 451, in which the High Court at Madras so held.

3. Munshi Ram Prasad, Government Pleader, calls attention to the not unusual practice of supporting applications for transfers of cases against accused persons being supported by affidavits made by such persons, but he does not cite any authority or even suggest any practice by which, either in matters of appeals or applications for revision, affidavits have been received made by the person who has been convicted and sentenced upon the original trial.

4. For my own part, I have no doubt that the Legislature intended to protect an accused person from the ordeal of examination as a witness and to render him incapable, therefore, of being punished for the making of false statements upon oath, or otherwise, so long as his case is sub judice. I accede to the contention that there is no, substantial difference between the position of a person accused and convicted, supporting by his own evidence a criminal appeal, and a case of an accused person desiring to defend himself by his oath in an original criminal trial. Still less am I able to draw any distinction in this respect between the position of a petitioner in appeal and a petitioner in revision. The object is the same, to revise or modify the action of the Court below, and every reason, which would render it not

desirable for a petitioner in appeal to be a competent and compellable witness, applies with equal force in revisional proceedings. Following, therefore, in principle the satisfactory ruling cited above, I grant this petition in revision and set aside the order of the District Judge by which it is sought by criminal proceedings to inflict legal penalties for the taking of a false oath under circumstances which render the person so to be charged incompetent to be put upon his oath at all.

1. Section 342.--For the purpose of enabling the accused to explain any circumstances

appearing in the evidence against him, the Court may, at any

Power to examine the stage of any inquiry or trial, without previously warning the

accused. accused, put sucli questions to him as the Court oonsiders neces

sary, and shall, for the purpose aforesaid, question him generally

on the case after the witnesses for the prosecution have been examined, and before he is

callsd on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such

questions, or by giving false answers to them; but the Court and the jury (it any) may draw

such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry

or trial, and put in evidence for or against him in any other inquiry into, or trial for,

any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.