

Raghunath Prasad Vs. State

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Court : Allahabad

Decided On : Oct-30-1958

Reported in : AIR1959All345; 1959CriLJ671

Judge : S.N. Sahai and ;A.P. Srivastava, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 350; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 116

Appeal No. : Criminal Revn. No. 1209 of 1958

Appellant : Raghunath Prasad

Respondent : State

Advocate for Def. : S.C. Asthana, Adv. (Brief Holder)

Advocate for Pet/Ap. : Bhagwan Das Gupta, Adv.

Disposition : Revision dismissed

Judgement :

A.P. Srivastava, J.

1. A complaint filed against the applicant under Sections 497 and 493 of the Indian Penal Code was pending in the court of the Magistrate and a part of the evidence had been recorded when the Criminal Procedure Code (Amendment) Act (Act

XXVI of 1955) came into force. By that Act Section 350 of the old Code was amended in certain respects. Under the unamended section the accused had a right to claim a de novo trial in the circumstances mentioned in the section. This right of the accused has been taken away by the amendment to Section 350 made by the Amending Act.

The applicant claimed a de novo trial as according to him in view of Section 116 of the Amending Act his case was governed by the unamended section. This contention was rejected by the Magistrate. He took the view that the amended section would apply and the applicant could not, on that account, claim a de novo trial. The applicant went up in revision to the Sessions Judge but that application was rejected.

He then preferred an application in revision to this Court and it came up for disposal before my brother Sahai J. He thought that the question was of some importance and an authoritative pronouncement in respect of it was needed. He, therefore, referred the case to a Division Bench. The case has, therefore, come up before us.

2. The short question that arises in the case, therefore is whether in this case, which was not only pending when the Amending Act came into force but in which some evidence had also been recorded, the provisions of the amended Section 350 of the Code will apply or whether the case will be governed by the unamended section as it stood in the original code.

3. We have been delivered of the necessity of dealing with the matter elaborately because a recent decision of the Supreme Court in 1957, *Anant Gopal Sheorey v. The State of Bombay*, Cri. Appeal No. 178 of 1957, D/-22-5-1958: (AIR 1958 SC 915), appears to cover the case entirely and in view of that decision it must be held that the application of the applicant was rightly rejected by the two courts below.

4. In the Supreme Court case also the case was pending before the Magistrate and some evidence had been recorded when the amending Act came into force. Then the accused made an application seeking the benefit of Section 342-A which

has been introduced in the Criminal Procedure Code for the first time by the Amending Act and which gave him a right to give evidence as a witness on his own behalf.

He claimed this right on the ground that the Amending Act having come into force during the pendency of the case, he was entitled to take advantage of it. This application of his was refused by the trial court as well as by the Sessions Judge and the High Court of Bombay and the view taken was that in view of Section 116 of the Amending Act no advantage of Section 342-A could be available to the accused in that case.

The case was taken up by the accused to the Supreme Court in appeal and that Court disagreeing with the decision of the High Court laid down that the correct interpretation of Section 116 of the Amending Act was that all the provisions of the Amended Criminal Procedure Code were applicable to all cases which were pending on the date on which the Amending Act came into force except those referred to in Clause (c) and those specifically mentioned in Clauses (a), (b) and (d) of Section 116.

They, therefore, held that the accused, in that case could take advantage of Section 342-A in spite of the fact that his case was pending since before the coming into force of the Amending Act and some evidence too had been recorded in it.

5. Applying the principle which their Lord-ships laid down in that case to the case in hand it becomes obvious that Section 350 not being one of the sections mentioned specifically in Clauses (a), (b), (c) or (d) of Section 116 the amended provisions of that section were applicable to the case and as in view of the amended provisions the accused was not entitled to claim a de novo trial as of right this prayer for that relief was rightly rejected.

6. The application in revision must, therefore, fail as without force. It is accordingly rejected. The record shall be sent back at once to the trial court so that the case may proceed.