

Raghubar Singh Vs. Emperor

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Court : Allahabad

Decided On : Dec-03-1947

Reported in : AIR1948All227

Appellant : Raghubar Singh

Respondent : Emperor

Judgement :

ORDER

Harish Chandra, J.

1. The applicant has come up in revision from an order requiring him to furnish security under Section 109, Criminal P.C. The order was made by a Magistrate. He went up in appeal to the Sessions Court which dismissed his appeal and he has now come up to the High Court in revision.

2. The point raised on his behalf is that the trial was illegal inasmuch as he was given no opportunity to cross-examine the prosecution witnesses further after the prosecution had closed their case and before he was called upon to enter upon his defence and produce his evidence, as provided by Section 256, Criminal P.C. Proceedings under chap. 8 are governed by the provisions of Sub-section (2) of Section 117 which requires that an enquiry under that chapter in a case in which the order requires security for good behaviour shall be made 'as nearly as may be practicable' in the manner prescribed for conducting trials and recording evidence

in warrant cases. The argument is that when proceedings in a case under Section 109, Criminal P.C., are required by this provision to be conducted in the manner prescribed for conducting trials and recording evidence in warrant cases, there is no reason why the provisions of Section 256 should not be followed. In the trial of a warrant case, the Magistrate under Section 254 frames a charge after taking all the evidence produced by the prosecution and making such examination, if any, of the accused as he thinks necessary. He is also empowered to frame a charge at any previous stage of the case if he is of opinion that there is ground for presuming that the accused has committed an offence triable as a warrant case. The charge is then read and explained to thus accused under Section 255 and he is asked whether he is guilty or has any defence to make Under Section 256 if the accused refuses to plead, or does not plead, or claims to be tried, he is required to state, at the commencement of the next hearing of the case, whether he wishes to cross-examine any, and, if so, which of the witnesses of the prosecution whose evidence has already been taken. If he says that he does wish to cross-examine them further, the witnesses named by him are recalled for further cross-examination. According to Sub-section (2) of Section 117 no charge is required to be framed in proceedings under chap. 8 and this is the main difference between proceedings under that chapter and proceedings under chap. 21 in regard to the trial of warrant cases. The Courts below are of opinion that inasmuch as no charge is framed in a proceeding under chap. 8 the stage at which according to Section 256 the accused is given an opportunity to cross-examine the prosecution witnesses further cannot arise and that therefore a person who is being tried under chap. 10 (VIII?) has no right to cross-examine the prosecution witnesses further after the evidence for the prosecution is closed.

3. I have been referred to a number of cases in which this question was considered. In *Trilok v. Emperor* : AIR1927 All660 a single Judge of this Court was of opinion that a person who is being tried under Section 110 (the procedure in a case under Section 109 is also the same) has the right to cross-examine the prosecution witnesses further under Section 256, Criminal P.C. This view was followed by a Bench of this Court in *Chandan v. Emperor* 17 A.I.R All. 274 The Judge by whom the case in *Trilok v. Emperor* : AIR1927 All660 was decided was also a member of this Bench and the view taken in *Trilok v. Emperor* : AIR1927

All660 was affirmed, although the question did not in fact arise in the case before the Bench. For the accused in that case had made no request to the Court for permission to cross-examine the prosecution witnesses further under Section 256, Criminal P.C. and the question that was raised before the High Court was whether the accused had or had not been prejudiced by the fact that the Magistrate had not asked them to state whether they wished to cross-examine the prosecution witnesses further or not. Their Lordships found that there was not the slightest possibility of there having been any prejudice to the accused by the fact that they had not been so asked.

4. In another case *Lachman Prasad v. Emperor* : AIR1943 All23 the question came up again before a single Judge of this Court. Both the previous cases were considered by him. He points out that in the second case there was only a passing reference to that question and that the question had not really arisen and that the learned Judges had decided not to interfere with the conviction upon the ground that no prejudice had been caused to the persons who had been bound over on account of the failure on the part of the Magistrate to ask them whether they wished to cross-examine the prosecution witnesses for the second time. He considered certain rulings of the Calcutta and the Lahore High Courts also and was of opinion that Section 256 in so far as it relates to the further cross-examination of prosecution witnesses did not in fact apply to proceedings under chap. 10(viii?) As he points out, a person who is charged with an offence during the trial of a warrant case; becomes aware for the first time of what exact charge he has to meet and he does not know his position with any accuracy until the charge has been framed. In the circumstances the law permits him to re-summon the prosecution witnesses who have already been examined before the charge was framed for further cross-examination. Obviously an accused cannot effectively cross-examine the prosecution witnesses until he knows what exact charge he has to meet and this is in fact the reason why this right to cross-examine the prosecution witnesses further has been given to an accused person under Section 256. In a case under chap 10(viii?) the accused is told in the very beginning of the trial what charge he has to meet and it is possible for him to cross-examine effectively all the prosecution witnesses who are produced thereafter. It is conceivable that during the trial of a warrant case against an accused person the

Magistrate may frame a charge against him after the examination of the very first witness by the prosecution. The other prosecution witnesses will then be produced after the charge has been framed and in the case of these witnesses it is obvious that the accused will have only one opportunity of cross-examining them. In a case under chap. 10(viii?) the charge, if I may use that word, is framed in the very beginning of the trial and there is no reason why the witnesses who have been produced by the prosecution after that should be allowed to be cross-examined by the accused a second time.

5. There is also a Full Bench case of the Madras High Court in 53 Mad. 173 in which the matter was fully considered by that Bench and it was held that an accused in a case under chap. 10(Viii?) has no right to cross-examine the prosecution witnesses for the second time. I am therefore of opinion that the trial of the applicant was not illegal on account of the fact that he was given no opportunity to cross-examine the prosecution witnesses for the second time.

6. It is pointed out that the learned Sessions Judge in appeal did not go into the merits of the case at all and dismissed the appeal merely on a consideration of the legal question that was raised before him. Apparently the case was not argued before him on the merits at all.

7. There is no reason to interfere and the application is accordingly dismissed.

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