

**inayat and ors. Vs. Rex**

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**SooperKanoon Citation :** [sooperkanoon.com/460708](http://sooperkanoon.com/460708)

**Court :** Allahabad

**Decided On :** Nov-16-1949

**Reported in :** AIR1950All369

**Judge :** Seth and ; P.L. Bhargava, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 510 and 540

**Appeal No. :** Criminal Revn. No. 1262 of 1949

**Appellant :** inayat and ors.

**Respondent :** Rex

**Advocate for Def. :** Aqiq Husain, Adv.

**Advocate for Pet/Ap. :** Vishwa Mitra, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Seth, J.**

1. This application in revision is directed against an interlocutory order in a pending criminal case. Ordinarily, this application should have been dismissed on this ground alone. We, however, decided to consider it on merits and to decide the question of law raised by it, because there is an order by the learned Judge, who

issued notice upon this application, stating that the question of law raised in this application is of some importance and deserves to be considered by a Bench of two Judges.

2. The applicants are on their trial for an offence under Section 5, Explosive Substances Act. During the course of the trial, was tendered in evidence a report from the Inspector of Explosives. It was received in evidence and exhibited without any objection on the part of the defence, the result of which was that the trial proceeded further on the assumption that that document was not required to be formally proved. It seems, that at the time when this document was received in evidence and exhibited, everybody, namely, those responsible for the prosecution, as well as those responsible for the defence, were under a belief that the document did not require formal proof, Section 510, Criminal P. C., lays down that a document, purporting to be a report of a Chemical Examiner, is receivable in evidence. The Chemical Examiner and the Inspector of Explosives is perhaps the same individual, although he holds two different offices. For this reason no objection appears to have been taken to the receipt of the report in evidence. At the time of the arguments learned counsel for the accused, however, contended with vehemence that the report should not be looked into, that it could not be treated as evidence without proof, and that it should be disregarded as a mere scrap of paper.

3. The evidence in the case was concluded on 1st August 1949, and 11th August 1949, was fixed as the date for the delivery of the judgment in the case. On 2nd August 1949, the Assistant Government Pleader applied that the Inspector of Explosives be examined under Section 540, Criminal P. C, for the purpose of formally proving his report. The object of this application was, therefore, clearly to meet a technical objection raised by the learned counsel for the accused, and to bring on the record the formal proof of the report of the Inspector of Explosives. There is no doubt that the ends of justice very much required that this lacuna in the evidence should be removed, for it was brought into existence not only on account of a misconception on the part of the prosecution, but also because the prosecution was encouraged in that misconception by the conduct of the defence. The learned Temporary Sessions Judge of Bijnor accepted this application and

made the following order:

'I am of opinion that the Inspector of Explosives should be summoned and called as a witness under Section 540, Criminal P. C., to give his evidence In this Court. He will not be allowed to be examined on commission. Assessors and accused be summoned for 24th August 1949, Fix. 24th August 1949.'

The applicants have come up to this Court in revision against this order, and it is contended on their behalf that the trial was closed when this order was made, and, therefore, the Court had no jurisdiction to summon the Inspector of Explosives as a witness under Section 640, Criminal P. C. at that stage.

4. Section 540, Criminal P. C., reads as follows:

'Any Court may, at any stage of any enquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.'

5. The learned counsel contends that the powers under the above section are exercisable only when an enquiry or trial is continuing and not when it has closed. The contention is that in this case after the evidence had been closed by the parties and after the opinion of the assessors had been taken, the trial had ended and judgment alone remained to be delivered. Learned counsel has relied upon certain cases in support of the contention that judgment is no part of a trial.

6. In our opinion even if we accept this last contention of the learned counsel, namely, that the judgment is not a part of a trial, it does not necessarily follow that a trial comes to an end immediately after the evidence in a case is finished or, where a case is tried with the help of assessors, immediately after the opinion of the assessors has been taken. Learned counsel has referred us to Section 366, Criminal P. C., for the purpose of showing that a trial comes to an end after the conclusion of evidence. The aforesaid Section 366 provides that the judgment in every trial in any criminal Court shall be pronounced in open Court either

immediately after the termination of the trial, or at some subsequent time of which a notice shall be given to the parties. The learned counsel argues that because a judgment is to be pronounced after the termination of the trial, therefore, it cannot be a part of the trial. In order to make good this argument it is necessary for the learned counsel to lay emphasis on the meaning of the word 'trial' used for the second time in this sentence. If the word 'trial' when used for the first time in this sentence is taken into account, it appears that the word 'trial' used therein does not exclude a proceeding relating to the delivery of the judgment for the section talks of a judgment 'in a trial' and does not provide for the judgment 'of a trial.' It seems to us that the word 'trial' has not been used throughout the Code in the same sense. This conclusion is further fortified by a reference to the history of the law relating to criminal procedure,

7. The Criminal Procedure Code of the year 1872, being Act X [10] of 1872, contained the definition of the word 'trial.' When a statute contains a specific definition of a word, it is to be interpreted as so defined wherever it occurs in the statute and ordinarily different meanings cannot be assigned to it. The same obligation of interpreting the word in the same sense everywhere in the statute does not exist when the word has not been defined by the Legislature. It is true that ordinarily the same meaning should be given to the word in the different sections of an enactment, but then the context and the object intended to be achieved by the Legislature may indicate that the word was not intended to be used in the same sense throughout the statute. When the Legislature, having defined the word in a previous statute, omits the definition from the subsequent statute, this inference becomes more probable. We consider, therefore, that because the word 'trial' has been used in certain sections of the Code to refer to the proceedings up to a certain stage, it does not follow, necessarily, that the word 'trial' in 8. 540 has also been used to refer to the proceedings to that very stage only.

8. The object of Section 640, Criminal P. C., is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence in the case, which is necessary for a just and proper disposal of the case. Indeed, the section casts a duty upon the Court to

'summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.'

The Court examines this evidence neither to help the prosecution nor to help the accused, The evidence is examined in the interests of justice. There seems to be no reason why it should have been intended by the Legislature that the Court should be robbed of this power or should be absolved of its duty of ascertaining the truth before a case has been decided but after the parties have concluded the evidence or argued the case. If the provision were intended for the benefit of the parties, it may have been possible to argue that a party, having exhausted all the opportunities allowed to it should, not be permitted to introduce further evidence. The provision has not been, as already stated, inserted for the benefit of a party. It is often that after the parties have led all the evidence and the Court has given a thorough consideration to that evidence, the Court feels the necessity of examining some evidence which has not been brought before it.

9. The Code does not specify when a trial ends and even if we accept the argument of the learned counsel for the applicants that a judgment is no part of a trial, there is nothing to hold that a trial comes to an end before a judgment has been pronounced. In our opinion a trial is terminated by the pronouncement of a judgment, and so long as a judgment has not been pronounced a trial is not terminated, even though the judgment itself may not be a part of the trial. We are supported in this view by a recent decision of this Court in *Channu Lal v. Rex* : AIR1949 All692 where a Division Bench of this Court has held that the mere fact that judgment is not included in the word 'trial' does not mean that trial finally concludes once the arguments are heard and that no witness can be examined after that point of time, even though the judgment has not been pronounced, and that the trial continues till the judgment is delivered. This was a case in which the meaning of the word 'trial' had to be considered in connection with Section 540, Criminal P. C.

10. Learned counsel for the applicants has relied upon an earlier decision of a Bench of this Court in *Bakshi Ram v. Emperor* : AIR1938 All102 in which it was held, that judgment is no part of a trial. The facts of that case were that the trial

was held by an Assistant Sessions Judge, but before the judgment was pronounced the officer who was the Assistant Sessions Judge became the Additional Sessions Judge and he pronounced the judgment as such. The question was, whether an appeal lay from his order to the Court of the Sessions Judge or to the High Court. It was held that inasmuch as the case was tried by the Assistant Sessions Judge, the appeal lay to the Sessions Judge and not to the High Court. It was in that connection that the meaning of the trial had to be considered. It is not necessary for us to express any opinion on the exact decision in this case, for we do not consider that this case can be regarded to be any authority about the meaning of the word 'trial' as used in Section 540, Criminal P. C. The other decision cited by us is a clear authority upon the exact point under consideration.

11. Learned counsel for the applicants has referred us to certain old decisions of the Punjab Chief Court. It is not necessary to discuss them, because they do not contain any reasons in support of the conclusions reached by the learned Judges.

12. We are thus of the opinion that the Court below had the jurisdiction to make the order that it has made and that there is no force in this application in revision. It is dismissed.

13. The record of the case will be immediately sent down to the Court below.

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