

Misri Lal Vs. Emperor

Misri Lal Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/461567

Court : Allahabad

Decided On : Dec-04-1933

Reported in : AIR1934All372; 147Ind.Cas.1197

Appellant : Misri Lal

Respondent : Emperor

Judgement :

Young, J.

1. This is an application in revision against the order of the learned Session Judge of Mainpuri. The applicant was charged under Sections 467 and 471, Penal Code, with forgery, and the trial is pending before the Assistant Sessions Judge of Mainpuri. When the proceeding were before the Magistrate, he asked the accused for a list of persons whom he (the accused) wished to be summoned to give evidence in his defence. At that particular stage the Crown had given notice that they meant to call a handwriting expert on the question of forgery. The accused could not tell what evidence the handwriting expert would give, As he was an expert called for the Crown, the accused had a right to presume that his evidence would be unbiased and honest; his evidence might even be in the accused's favour on the question of the alleged forgery. It was therefore unnecessary at that stage for the accused to decide whether he would call a handwriting expert on his behalf or not. Such an expert would only be called by the defence when it became

clear that the expert for the Crown formed an opinion adverse to the interest of the accused. So at the date of the proceedings before the Magistrate no name of any expert for the defence was included in the list of defence witnesses. Subsequently however the crown expert was examined on commission. It then became clear that this expert was prepared to say that the signature was a forgery. The proceedings with regard to the examination of the expert on commission were the subject matter of an application in revision to the High Court, which was successful, and eventually 26th April 1933, was fixed for the hearing of the trial.

2. The accused knew of the date of hearing only on the 7th April, and on the 8th April he applied to the Assistant Sessions Judge for an expert, whom he named, to be called on his behalf at the expense of Government. The Assistant Sessions Judge merely said that the accused had no right at this stage to have the witness summoned, and dismissed the application. The learned Sessions Judge, in revision, confirmed the order of the Assistant Sessions Judge and added that as one expert witness was already being called for the Crown, another expert witness for the defence was wholly unnecessary. This, in my mind, is an extraordinary view to take. In every case where experts are called there must of necessity be an expert for the defence as well as for the Crown. It is generally possible, in most cases, to get an expert to deny the opinion of another expert, and this is of course specially so as regards handwriting experts. There is never the slightest difficulty in getting a handwriting expert to contradict what another handwriting expert says. To have therefore on the record a handwriting expert's opinion for the benefit of the Crown without giving the defence an opportunity of calling another handwriting expert to give the opposite view would be most unfair. The Courts below however were perfectly right in coming to the conclusion that under the Criminal Procedure Code, there is no section which gives an accused person an absolute right to have a witness summoned by the Crown, except Section 211, which applies to the list of witnesses handed in the Magistrate's Court. Section 291, however reads as follows:

The accused shall be allowed to examine any witness not previously named, if such witness is in attendance, but he shall not, except as provided in Sections 211 and 231, be entitled as of right to have any witness summoned other than the

witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

3. While therefore it is clear that the applicant in this case had no absolute right to have a witness summoned, it is also clear that under Section 291, and indeed under the inherent jurisdiction of the Court, the learned Judge could have exercised a discretion in summoning a material witness for the defence. Whereas in this case there was a perfect excuse for not naming the witness who was required to be summoned in the list before the Magistrate, the learned Judge ought, in my opinion, to have exercised his discretion in favour of the applicant. When I say this I do not say that the learned Judge was wrong in that part of the order which refuses to summon a witness at Government's expense. The learned Judge, when he exercises a discretion and does not enforce a right of the defendant, would be entitled to make terms, and while, in my opinion, the proper order would be that the ordinary expenses of summoning a witness should be paid by Government, the extraordinary expenses of an expert witness's fee might be left to the defendant himself.

4. I therefore set aside the order of the lower Court and direct that the expert witness named by the defendant should be summoned by the Court. The ordinary expenses to bring the witness to the Court should be paid by Government. The question of the expert witnesses fee is a matter, for the defence to settle for themselves.