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Ram Singh and ors. Vs. State

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Court : Allahabad

Decided On : Feb-03-1959

Reported in : AIR1959All623

Judge : M.C. Desai, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 205, 205(1), 205(2), 342 and 342(1)

Appeal No. : Criminal Revision No. 129 of 1957

Appellant : Ram Singh and ors.

Respondent : State

Advocate for Def. : M.M. Chaturvedi, Adv.

Advocate for Pet/Ap. : S.N. Mulla, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

M.C. Desai, J.

1. No case for interference is made out at all. The personal attendance of two of the applicants was exempted under Section 205(1) Cr. P. C., and they did not

appear in court on any date and consequently were not examined by the court under Section 342, Cr. P. C. I do not consider that their non-examination in these circumstances was an illegality. It is true that under Section 342, Cr.P.C., an accused must be examined after the witnesses for the prosecution have been examined, but this presupposes that he is present. There is nothing in the language of Section 342(1) to suggest that an accused, whose personal attendance has been exempted under Section 205 (1), also must be examined after the witnesses for the prosecution have been examined.

The exemption from the personal attendance contemplated by Section 205(1) is for the whole duration of the trial; it follows that an accused can be exempted from personal attendance even on the date on which the examination under Section 342 is to take place. It is for the accused himself, if he wishes to make a statement, to appear in court; there is no-thing to compel the court to summon him for the purpose of examination. It is provided in Sub-section (2) that the court may, in its discretion, at any stage of the proceedings, direct his personal attendance. This discretionary provision is quite inconsistent with the idea of any obligation upon the court to direct his personal attendance for any purpose, even for the purpose of examining him under Section 342.

The language of Sub-section (2) would have been different if the legislature had intended that the accused must be directed to appear in court for the purpose of being examined under Section 342 and that the exemption from personal attendance inures for the whole trial except his examination. Examination of the accused is only one step in the trial and the language of Sub-section (1) is general and sufficiently wide to include exemption from personal attendance even on the date on which the accused would be examined, if present, under Section 342.

Since the court is not bound by any law to direct the personal attendance of the accused for any purpose, it follows that no illegality was committed in the present case by the court's not directing the personal attendance of the two applicants. If they were not present, they could not possibly be examined. Even if they were present they were not bound to make a statement, if they wanted to make a statement all that they had to do was to appear in court on the date on which the

examination was to take place. It was held in Emperor v. Jaffar Cassum Moosa, 35 Cri. LJ 1035 : (AIR 1934 Bom 212) that Section 342, Cr. P. C., must be read subject to the provisions of Section 205 and that the court is not bound to examine the accused personally if his personal attendance has been exempted under Section 205.

2. There is no specific provision which allows the court to examine the pleader of the accused whose personal attendance has been exempted under Section 205. Under Section 342 (only) the accused is to be examined (and not his pleader). It has, however, been held that the pleader can be examined on behalf of the accused, see Emperor v. Jamal Khatun, 34 Cri. LJ 272 (Sind), Maung Po Nyein v. Haka Singh, ILR 4 Rang. 506 : (AIR 1927 Rang. 73) and Dorabsha Bomanji v. Emperor, : AIR1926 Bom218 . In the first case a bench of the Sind Judicial Commissioner's Court observed : 'Section 206 allows the accused to appear by pleader and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial such as answering the examination by the Court under Section 342 or pleading or refusing to plead to the charge under Section 255.' It does not, however, follow that non-examination of the pleader is a fatal defect. I doubt if it can be said that the Court is compelled by Section 342 to examine the pleader of the accused whose personal attendance has been exempted under Section 205; the language of neither Section 342 nor Section 205 lends any , support to the idea of any such compulsion.

3. The applicants themselves applied for exemption of their personal attendance and cannot be permitted to take advantage of the fact that their application was granted by pleading that in spite of the exemption they should have been summoned to be examined under Section 342, particularly when it was always open to themselves to appear in court for that purpose.

4. There is no substance in the contention that the case could not be tried by the court below and that only a panchayati adalat had jurisdiction to try it. The failure of the trial court to prepare a memorandum of the inspection is of no consequence. Lakshmi, who was examined on behalf of the prosecution before the charge was framed, was not recalled for cross-examination after the charge, but the trial court

has not relied upon his evidence at all.

5. There is no substance in this applicationand it is dismissed.

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