

Balkrishna Sharma Vs. Emperor

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Court : Allahabad

Decided On : Aug-31-1931

Reported in : AIR1932All125; 137Ind.Cas.636

Appellant : Balkrishna Sharma

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an application in revision from an order of the District Magistrate of Cawnpore directing that the defence should select three witnesses out of Nos. 1 to 10 and 8 other witnesses out of the remaining lists. The case pending before him is one under Section 124-A, I.P.C.

2. A preliminary objection is taken that no revision lies because the applicant has not approached the Sessions Judge in the first instance. No doubt it is the general practice of this Court not to entertain a revision when the applicant could have gone to the superior Court of the District Magistrate or the Sessions Judge. But of course, even a settled practice does not oust the jurisdiction of the High Court, In Mannu v. Emperor [1920] 20 Cr. L.J. 705 and Emperor v. Mansur Husain [1919] 41 All. 587, Piggott, J., referred to this practice and yet entertained the revisions. In the case Sharif Ahmad v. Qabul Singh A.I.R. 1921 All. 30, a Division Bench in clear terms, declared that there was this practice. Nevertheless they entertained

that particular revision and set aside the conviction. In the case Emperor v. Bhure Mal A.I.R. 1923 All. 606, which was after the decision of the Division Bench, another learned Judge again referred to the same practice and yet decided the application on the merits. On the other hand my attention has been drawn to two other cases decided by single Judges, where the applications were not entertained: Nathe Singh v. Emperor : AIR1927 All829 and Jadunandan Misra v. Sheopthal : AIR1929 All272 .

3. The present case is however distinguishable. The offence under Section 124-A is triable by either the District Magistrate or the Sessions Judge. It is not triable 'exclusively by the latter. Under Section 408(c), Criminal P.C., an appeal lies from the order of the District Magistrate direct to the High Court and not to the Sessions Court. The propriety of the orders passed by the District Magistrate would therefore have to be considered by the High Court in appeal and not by the Sessions Judge. No case has been brought to my notice in which a revision from an order passed by the District Magistrate where an appeal would have lain direct to the High Court was not entertained 'simply because the Sessions Judge had not been approached first. I therefore think that I am not precluded from considering the application on the merits.

4. The learned District Magistrate has remarked that he did not make any suggestion of a deliberate attempt at obstruction by the defence, but that the remaining witnesses, if summoned, would in fact result in achieving the purpose of very great delay and defeating the ends of justice. The accused had summoned no less than 183 witnesses. I would not say that a Court is, not entitled to infer from the mere fact that an unduly large number of witnesses have been summoned, that the application has been made for the purpose of vexation or delay or for defeating the ends of justice. But where the Magistrate does not consider that the application has been made for such a purpose, he has no option but to issue process under Section 257(1), Criminal P.C. The section is imperative and compels the Magistrate to issue such process, except in the case mentioned above. Where he refuses process he is directed to record his grounds in writing.

5. The number of witnesses which the prosecution or the defence might reasonably produce in a case depends to a large extent on the scope of the inquiry. Outside the provisions of Section 257, Criminal P.C., it is not open to a Magistrate arbitrarily to limit the number of witnesses which the defence should be allowed to produce, any more than the Magistrate can restrict the number of witnesses which the prosecution should produce.

6. The High Court has added Rule 8 (correction slip No. 37) at the end of Ch. 3 of the General Rules (Criminal). Under this rule:

every application for the issue of process for the attendance of witnesses shall, if the party-presenting the application is represented in the case by a legal practitioner, contain a certificate signed by such legal practitioner that he has satisfied himself that the evidence of each of the witnesses is material in the case.

7. This rule provides an ample safeguard against a reckless summoning of witnesses. The Magistrate should insist upon such a signed certificate being filed. That will enable the Magistrate to decide for himself whether any witnesses are being summoned for the purpose of vexation or delay or for defeating the ends of justice. If he cannot come to such a conclusion he has no jurisdiction to refuse to summon the witnesses, even though the number may be inconveniently large.

8. I accordingly set aside the order limiting the number of witnesses, and send the case back to the Court of the District Magistrate with direction to proceed in the light of the above observations. I may add that Dr. Katju on behalf of his client assures me that his client will submit a shorter revised list of witnesses to the District Magistrate.