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Court : Allahabad

Decided On : Dec-07-1953

Reported in : AIR1954All674

Judge : Kidwai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 350(1)

Appeal No. : Criminal Reference No. 118 of 1953

Appellant : Mangat and ors.

Respondent : State

Advocate for Def. : Gopal Behari, Adv.

Advocate for Pet/Ap. : D. Sanyal, Adv.

Disposition : Reference rejected

Judgement :

ORDER

Kidwai, J.

1. This case has been referred, by the learned Sessions Judge of Meerut for directing a Magistrate to examine the witnesses 'de novo' since a request to that effect has been made and disallowed by the Magistrate. The facts upon which this

recommendation has been made are that the complaint was originally filed on 14-9-1950 in the court of Sri Aizaz Ahmad who was later transferred and was succeeded by Sri Parmesh-wari Dayal. Sri Bharadwaj succeeded Sri Parmeshwari Dayal and Sri R. P. Srivastava replaced Sri Bharadwaj. On 16-10-1951 Sri Bharadwaj asked the counsel for the accused whether he can claim a 'de novo' trial. One of the counsel who represented ten out of twenty accused did not claim a 'de novo' trial; the other counsel made no statement.

2. When the matter came before Sri Srivastava on 6th of November 1951 Mr. Srivastava was not present in court on that date. The case was accordingly adjourned to 10-11-1951. Again Mr. Srivastava was not present and the case was therefore fixed for 22-11-1951. On that date the Magistrate was present and so were the accused and their counsel as well as the prosecutor. An order was passed directing the case to be put up for the production of the defence evidence on 6-12-1951 since there was no time for doing anything in the case on 22-11-1951. No 'de novo' trial was claimed by the accused on this date in spite of the fact that they and their counsel were present. On the 6th December, also the Magistrate was not present and the case was taken up on 29-12-1951, when a request was made for a 'de novo' trial. The learned Sessions Judge is of the opinion that 29-12-1951 was in fact the first day of hearing for the new Magistrate.

3. It is clear, however, that proceedings commenced before the new Magistrate on 22-11-1951 when the court was present, the accused were present with their counsel and the prosecutor was present. On that date the order that was passed was that the case should be taken up on the 6th of December, for the production of the defence evidence. That was the first occasion on which a demand should have been made by the defence that the prosecution witnesses or such of them as the defence desired should be resubmitted because obviously the defence evidence can only be produced after the prosecution evidence had terminated. No such request was made.

It must, therefore, be held that the accused did not, at the time when the new Magistrate commenced his proceedings, demand that the witnesses or any of them be resubmitted and re-heard. If a demand was made at a subsequent date,

the Magistrate was not bound to accede to it and his order rejecting the request made on 29-12-1951 was not against the provisions of Section 350, Criminal P. C.

4. This reference is, therefore, rejected and will be sent back to the court below.

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