

Mohammad Shafi Vs. State and ors.

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Court : Allahabad

Decided On : Feb-03-1953

Reported in : AIR1953All667

Judge : Agarwala and ;Mukerji, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 540; [Evidence Act, 1872](#) - Sections 137

Appeal No. : Criminal Revn. No. 781 of 1951

Appellant : Mohammad Shafi

Respondent : State and ors.

Advocate for Def. : Mohd. Baqar Usmani, Adv.

Advocate for Pet/Ap. : S. Hasin Ahmad, Adv.

Disposition : Application dismissed

Judgement :

Mukerji, J.

1. This is an application by Mohatnmad Shafi who was a complainant in a criminal case. This case, which was filed by him before a Magistrate, was under Sections 379/147/504/ 503, I. P. C. against the opposite parties. During the course of the

trial, the complainant examined himself and after his examination was over --both examination and cross-examination -- it appeared that some documents which were relevant to this case had not been produced by him, nor had they been proved. Consequently an application was moved on his behalf on 2-12-1950, seeking permission to put in the documents and to prove those documents by oral evidence. In this application it was stated that the complainant should be called Under Section 540, Criminal P. C. for the aforesaid purpose. Objection was made on behalf of the accused to this request by the complainant. The learned Magistrate disposed of the application and the objection on 28-12-1950 in the following words :

'I have heard the objection by the counsel for the accused that the witness cannot be examined afresh. But since he is not going to introduce any new matter and since the documents which he wants to file and prove may be of value to the just decision of the case, I call the complainant to come and prove the documents under Section 540, Cr. P. C.'

From the aforesaid order of the learned Magistrate it would appear that the learned Magistrate permitted the recall of the complainant for the limited purpose of putting in and proving certain documents which, in the view of the Magistrate, were to be of assistance in the just decision of the case. After the complainant had been permitted to prove the documents which he had filed at his recall under Section 540, Cr. P. C., request was made on his behalf by his counsel to ask him further questions in order to connect these documents, so to speak, with the relevant facts of the case. The learned Magistrate appears to have prohibited this.

Feeling aggrieved by the decision of the Magistrate not to permit the complainant to be examined at length on the documents which he had produced, the complainant went up in revision to the learned Sessions judge, which was rejected by the learned Sessions Judge mainly on the ground that the complainant had yet opportunity to bring forward evidence which could connect these documents with the relevant facts of the case, since the complainant's evidence had not been closed. A revision, was then made to this Court by the complainant which was, in its first instance, heard by a learned single Judge who thought it fit to refer this

question and this case to a Bench for decision.

2. The question which calls for determination is whether the complainant had a right to examine himself at length in relation to the documents which he had been permitted, to produce and prove under the powers conferred by Section 540, Cr. P. C. We have already quoted at length the order which the learned Magistrate made on the application of the complainant and from it, it would appear, that the learned Magistrate permitted the complainant to re-examine himself only to the extent to which it was necessary to prove the documents which he was permitted to file at that stage.

3. Section 540 Criminal P. C. gives the Court a discretion to summon any person as a witness who has been not summoned by any party or to examine a witness who is in attendance, or to recall a witness who has already been examined.. This section does not confer a right in any party to examine, re-examine or cross-examine any witness. It is also clear from the words of this section that no party has a right to claim action under Section 540, Cr. P. C. It is entirely discretionary in the Court in the interests of justice to take action or not to take action under this section. The right to cross-examine a witness who is called by a Court -- a witness who is not one who has been summoned by any party -- arises not under the provisions of Section 540, Cr. P. C., but, under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, therefore Courts have given the right of cross-examination to both the parties in respect of such a witness. A witness who is recalled under Section 540 at his own instance, cannot claim to cross-examine himself under the provisions of the Evidence Act, for Section 137 states what is meant by examination-in-chief and what is meant by cross-examination and re-examination. The section is in these words :

'The examination of a witness by the party who calls him shall be called his examination-in-chief.

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.'

In our judgment, therefore, there was in this case no right in the applicant to either examine himself at any length or to cross-examine himself. The terms on which he was permitted to be re-examined were laid down clearly by the learned Magistrate in his order of 28-12-1950. In our view the learned Magistrate was perfectly within his rights to do so and in laying down those terms, the learned Magistrate had in no manner prejudiced any party to the case.

4. In our judgment, therefore, there are no merits in this application which we accordingly dismiss.

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