

Vijitendra Kumar Gupta Vs. State of U.P.

Vijitendra Kumar Gupta Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/488936

Court : Allahabad

Decided On : Feb-11-2003

Reported in : 2003CriLJ4101

Judge : K.N. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 227 and 228

Appeal No. : Crl. R. No. 1930 of 2002

Appellant : Vijitendra Kumar Gupta

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.R. Gupta, Adv.

Disposition : Revision allowed

Judgement :

K.N. Sinha, J.

1. The present revision has been filed against the order dated 19-10-2002 passed by Sessions Judge, Etah in Sessions Trial No. 691 of 2002 rejecting the application for summoning the documents and record before hearing on the charges.

2. The brief facts giving rise to this revision are that the revisionist was facing trial in Session Trial No.691 of 2002 wherein date was fixed for framing of the charge. On that date the revisionist moved an application for summoning certain documents which was rejected. Being aggrieved by the said order the present revision has been filed.

3. I have heard learned counsel for the revisionist and learned AGA,, perused the impugned order.

4. Learned counsel for revisionist has submitted that the revisionist made a request for summoning the record of ballistic expert report, Chemical analysis report, Radio Transmission Set message and Case Diary of Case Crime No. 739 of 2002 before hearing on the framing of the charges but the same was rejected. Hence this revision.

5. Learned counsel for the revisionist relied upon *Shri Satish Mehra v. Delhi Administration* (1996) All Cri C 704 (SC) and submitted that the accused has a right to file the document which the Court is bound to consider in view of the principles laid down in the case of *Sri Satish Mehra* (supra). In this connection the provisions of Sections 227 and 228 are relevant, when the trial starts before the Sessions Judge, the prosecutor opens his case by describing the charges brought against the accused and stating by what evidence he proposes to prove the guilt of the accused, after this, if the trial Judge finds that there is not sufficient ground for proceedings against the accused, he shall discharge the accused and record his reasons for doing so, if in the opinion of the trial Judge no case of discharge is made out, then he shall frame a charge, if the case is exclusively triable by the Court of Session. The Apex Court has interpreted the words 'after hearing the submissions of the accused.... occurring in Section 227 of the Code of Criminal Procedure, as follows :

'The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that

such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 or the Code.'

6. A careful perusal of the above would show that the accused besides making oral submission can also produce other material (documentary, evidence) and the trial Judge will consider the said documents at the stage of framing of the charge. The accused can file certain documents which are in his custody or this certified copy of which is made available but there are certain documents relating to the said offence, which are available either with the police or with the prosecution. The report of the Ballistic Expert, Report of Medical Examiner and the Case Diary are directly relates to the commission of the said offence. Of course the Court has to supply the copy of all the documents on which the prosecution relies upon or which are to be given in evidence during the trial. There was no justification for the refusal of summoning of case diary. Ballistic Expert report and the Chemical Examiner's report what would have been the result of consideration of these documents before the charge is quite a different matter but if the document has to be used during the trial, the accused can rightly argue before the charge.

7. Consequently, the order of the learned Sessions Judge dated 19-10-2002 is not justified and is liable to be set aside. The revision is allowed. The order dated 19-10-2002 is set aside. The learned Sessions Judge shall consider the application 10B of the revisionist afresh in the light of the observations made above.