

Badrinarayan Puralal Vs. State

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Court : Madhya Pradesh

Decided On : Sep-18-1950

Reported in : 1951CriLJ509

Judge : Shinde, J.

Appellant : Badrinarayan Puralal

Respondent : State

Judgement :

ORDER

Shinde, J.

1. This application in revision is by Badrinarayan who is awaiting his trial in the Sessions Court at Shajapur. The facts giving rise to this petition are briefly these. Badrinarayan was challaned under Section 302, Penal Code in the Court of the Sub-Divisional Magistrate, Susner who committed the accused to the Sessions Court. Before starting the trial the complainant submitted an application to the Sessions Judge to the effect that certain witnesses may be examined. The learned Sessions Judge passed an order to the effect that the application of the complainant being in accordance with the provisions of Section 219, Criminal P.C. is accepted. He also directed, by the same order, the Sub-divisional Magistrate at Susner to examine the witnesses mentioned in the complainant's application from day to day and that the case be sent to the Court before 4-9-1950 as 11-9-1950

had been fixed for hearing. Against this order of the Sessions Judge the accused has filed this revision petition.

2. The learned Counsel for the petitioner has raised two contentions. His first contention is that as it is sessions trial the complainant has no right to request the Court for permission to produce evidence. In support of his contention he relies on the provisions of Section 493, Criminal P, C. The contention of the learned Counsel that in a cognizable case the complainant has no locus standi cannot be accepted. Chitale and Annaji Rao in their learned commentary on Section 340, Criminal P.C. state as follows:

The section is confined in terms to persons against whom proceedings are taken, but even the complainants have been held to have the legal right to be represented by counsel; of course, when the Government takes up the prosecution the officer acting on behalf of the Government will take the lead.

Section 493 supports the same view. All that Section 493 requires is that the pleader appearing on behalf of a private person has to work under the directions of the Public Prosecutor. It is not correct, therefore, to say that a complainant has no locus standi in a case of which the Public Prosecutor has charge, A pleader appearing for a private person can conduct the prosecution but he must act under the direction of the public prosecutor. In this case, it is clear from the order of the Sessions Judge that the Public Prosecutor himself desired additional witnesses to be examined. Under the circumstances there is no doubt that the complainant was acting under the direction of the Public Prosecutor himself. There is, therefore, no irregularity on the part of the Sessions Judge in ordering complainant's evidence to be recorded.

3. The second contention of the petitioner was that as the accused has already been committed to the Sessions Court no additional evidence can be recorded by the committing Magistrate. This argument also has no force. Under Section 219, Criminal P.C., the committing Magistrate may examine supplementary witnesses even after the commitment as long as the trial is not commenced. If the trial commences the power of the committing Magistrate to examine supplementary witnesses comes to an end. The Magistrate can exercise the power of his own

accord or on being directed to do so by the Sessions Judge, who, on examining the record, finds gaps in the evidence which he deems necessary to be filled up (Criminal P.C. by Chitale and Annajirao, Vol. 3, Edn. 2, p. 1313). It is clear, therefore, that even at the instance of the Sessions Judge the committing Magistrate can examine supplementary witnesses in order to fill up the gaps in the evidence. In the present case it appears from the order of the Sessions Judge that there has been no post mortem examination of the deceased's body and in order to fill up this gap in the evidence, at the instance of complainant, the Sessions Judge has directed the committing Magistrate to examine certain supplementary witnesses. The result is that there is no irregularity even in this part of the Sessions Judge's order.

4. For these reasons the revision application is rejected.

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