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Durga Prasad Vs. State

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Court : Madhya Pradesh

Decided On : Mar-05-1956

Reported in : 1957CriLJ285

Judge : Dixit, J.

Appellant : Durga Prasad

Respondent : State

Judgement :
ORDER

Dixit, J.

1. The facts of this revision petition are that the District Judge of Gwalior has launched a complaint in the Court of City magistrate Lashkar against the applicant Durga Prasad in respect of an offence under Section 193, I. P. C. The complaint was an offshoot of certain proceedings to which Shivnarain was a party. He, therefore, engaged a counsel to appear on his behalf in the criminal proceedings instituted against the applicant on the complaint filed by the District Judge. The applicant objected to the appearance of Shivnarain Sharma in the case. The learned City Magistrate after hearing the objections of the petitioner came to the conclusion that under Section 493 Cr. P. C. the opponent Shivnarain Sharma could be allowed to appear.

Durga Prasad then applied to the Sessions Judge of Gwalior for a revision of the order of the City Magistrate permitting Shivnarain Sharma to appear. This was rejected. The accused has now come up in revision to this Court.

2. The sole question for determination in this revision petition is whether the opponent Shivnarain Sharma is entitled to appear in the case along with the Public Prosecutor and whether he can address the Court and conduct the case in accordance with the directions of the Public Prosecutor. I do not think the opponent can claim any, such right. The opponent has clearly not the status of a complainant. Where the court takes action under Section 476 Cr. P.C. and makes a complaint, it is the Court and not the private party Who moves the Court by an application for taking action that is the complainant.

The opponent has, therefore, no locus standi to conduct the case on behalf of the prosecution independently or along with the Public Prosecutor or to address the Court. He has also not the right to object to the appearance of the petitioner's counsel, as he has done before the trial Magistrate. The opponent Shivnarain Sharma is not a party interested in the proceedings. His interest, if any, is only remote in that the applicant's Prosecution arises out of the proceedings to which he was a party. The applicant's prosecution is under Section 193 I.P.C., and in that prosecution the private interest or private feelings of the opponent and his desire to see that the applicant is convicted can have no place.

There can of course be no objection to the opponent's counsel holding a watching brief on his behalf in the proceedings. But that would not entitle him to any right to audience or any right to conduct the prosecution. Even with regard to the appearance of a private person complainant, it has been held by the Nagpur High Court in Kartikram v. Emperor AIR 1937 Nag 123 (A) that where the prosecution is properly represented by the State, the complainant has no right of audience and the Court should not allow him to appear on grounds of public policy. In that case Bose J., observed:

The interests of the Crown and the complainant are not always the same. Private Parties often wish to serve their own private ends, and criminal proceedings are not primarily designed for that. It would be unfortunate to allow private passions

and prejudices to creep into the conduct of a criminal trial, when it can be avoided. It would be even more undesirable to leave the matter in two sets of hands with a possible conflict of interest; undesirable generally from the broad view-point of public policy, undesirable also because it would be unfair to the accused. Therefore, if the other side is properly represented by the Crown, not only has the complainant no right of audience, but ordinarily he should not be allowed to appear at all.

3. I am clear in my mind that in this case the non-applicant Shivnarain Sharma cannot claim any right to address the Court or conduct the prosecution under the directions of the Public Prosecutor. It would not even be desirable on grounds of public policy, to allow him to appear in the case for conducting the prosecution and for addressing the Court. I, therefore set aside the order dated 1st October 1955 of the learned City Magistrate granting permission to the opponent's counsel to conduct the case under the directions of Public Prosecutor. This of course does not affect the opponent's right to instruct a counsel to attend the proceedings and to hold a watching brief on his behalf. The opponent is also at liberty to help the Public Prosecutor, if he needs the help.

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