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Court : Madhya Pradesh

Decided On : Feb-16-1957

Reported in : AIR1957MP219; 1957CriLJ1407

Judge : Nevaskar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 205, 342, 366(2) and 540A

Appeal No. : Criminal Revn. No. 141 of 1956

Appellant : The State

Respondent : Tarachand Anand

Advocate for Def. : S.L. Garg, Adv.

Advocate for Pet/Ap. : J.D. Patel, Dy. Govt. Adv.

Disposition : Petition rejected

Judgement :
ORDER

Nevaskar, J.

1. Accused Tarachand is being prosecuted for offences under Sections 406 and 420, Indian. Penal Code before the First Class Magistrate, Mhow. He applied for

being exempted from personal appearance.

2. This prayer was initially rejected but the High Court of Madhya Bharat in Criminal Reference No. 129 of 1951 granted exemption in the following terms:

'I would therefore direct that the exemption be granted to the accused on the ground that he lives at Dehradun and it would be very expensive and inconvenient for him to attend the Court at every time and grant him exemption throughout the trial.'

3. After the case went back to the trial Court prosecution evidence was examined and the stage was reached when the examination of the accused under Section 342, Criminal P. C. was to take place. At that time it was urged on behalf of the State that the accused could not be examined through his counsel and that he ought to personally appear. The Magistrate rejected the contention in view of the terms of the order of the High Court in this very case. On revision the learned Sessions Judge took the same view.

4. The present petition is directed against that order.

5. The learned Deputy Government Advocate contended relying upon the decisions reported in Sardar v. Emperor, AIR .1934 All 693 (1) (A); Adeluddin v. Emperor, AIR 1945 Cal 482 (B); State of Madhya Bharat v. Hiralalji, AIR 1953 Madh-B 26 (C) that the accused ought to remain personally present in order that he may be questioned under Section 342, Criminal Procedure Code with regards to facts appearing in evidence against him and that it is not open for him to appear through his counsel for his examination under that section.

6. On the other hand Mr. Garg for the accused relied upon the decisions reported in In re, Ragha-van, AIR 1950 Mad 814 (D); Sm. Champa Devi v. Babulal Ooenka, AIR 1950 Cal 16,1 (E); Rusi Bis-wal v. Nakhyatramalini Devi, AIR 1954 Orissa 65 (F) and Begum Eejun v. The State, (S) AIR 1955 Raj 175 (G), in support of the contention that where the accused is granted exemption from personal appearance it is not necessary for him to appear personally lor his examination under Section 342, Criminal Procedure Code and that he could answer through his

counsel duly instructed for the purpose.

7. In order to consider which one of these two views I ought to follow it will be necessary to examine the provisions under Sections. 342, 353 and 540-A, Criminal P. G.

8. Section 342, Criminal Procedure Code is as follows:

'(1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(4) No oath' shall be administered to the accused when he is examined under Sub-section (1)."

9. Having regard to the wordings of this section it appears to me to be clear that normally it is the personal presence of the accused that is contemplated under this section.

10. Sub-section (1) of Section 342 indicates that it is open for the Court to put any question to the accused as regards any piece of evidence appearing against him and this he can do without previously warning him. He is also empowered to question the accused generally before he is called upon to enter his defence.

11. Sub-section (2) indicates that the conduct of the accused when thus questioned becomes a relevant piece of evidence for or against the accused.

12. Sub-section (3) makes these answers admissible in any other case against him.

13. Thus if the accused is not personally prer sent to give answers it is not possible to draw any inference as to the manner in which he answers. Nor is it possible for the Court to put questions as indicated in Sub-clause (1) of that section.

14. The provisions therefore as they stand normally are meant to require personal presence of the accused.

15. This also appears to be indicated by the recent observations of the Supreme Court in Tilkesh-war Singh v. The State of Bihar, (S) AIR 1956 SC 238 (H), where his Lordship Venkatarama Ayyar, J., observed:

'It is no doubt true that Section 342 contemplates examination in Court and the practice of filing statements is to be deprecated.'

16. The next question is whether the presence of the accused is indispensable or in other words if he had been granted an exemption from personal appearance he can answer questions by duly instructing his counsel for the purpose.

17. In short whether Sections 205 and 540-A control Section 342. Beaumont C. J. in Emperor v. Jaffar Cassum Moosa, AIR 1934 Bom 212 (I) has held that Section 205, Criminal Procedure Code controls Section 342 of the Act and not the other way about.

18. The same view is taken by a Division Bench of the Calcutta High Court in AIR 1950 Cal 161 (E).

19. In AIR 1950 Mad 814 (D), Chandra Shekhar Reddi J. while dealing with the question of examination of the accused under Section 342, Criminal Procedure Code where he has been granted exemption under Section 205 observed:

'Under Sub-section (2) it is in the discretion of the trial Magistrate to direct the accused to appear in person whose personal attendance is dispensed with under Sub-section (1) of Section 205. If the Legislature intended to make it obligatory on the part of the trial Magistrate to examine the accused under Section 342 even when his personal attendance was dispensed with, it would not have expressed itself in the wording of Sub-section (2). It looks to me that the intendment of Sub-section (2) is to vest the discretion in the Magistrate to direct the accused to be present whenever he thinks it necessary either for questioning him under Section 342 or for any other purpose. It is for the Magistrate to consider whether it is necessary to direct the personal attendance of the accused who was exempted under Section 205, Criminal P. C., for questioning him under Section 342 of the Code, and if he does not insist on the appearance of the accused in Court for that purpose, the trial cannot be rendered illegal. I, therefore, hold that failure to examine the accused personally as required by Section 342, Criminal Procedure Code, does not vitiate the trial when his personal attendance is dispensed with under Section 205, Criminal Procedure Code, so there is no illegality in the trial of the case which entitles the accused to an acquittal.

20. Section 540-A which is another section which deals with the question of exemption of the accused from personal appearance is as follows:

"Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit, and for reasons to be recorded by him, either adjourn such inquiry or trial, or

order that the case of such accused be taken up or tried separately.'

21. It will appear by examining the provisions of Section 205 and 5. 540-A, Criminal Procedure Code, that the aforesaid observations of Chandra Sekhar Reddi J. are equally applicable to both these sections.

22. It is also indicated in the aforesaid Calcutta decision that whenever a Magistrate issues a summons he has the power to dispense with the personal attendance of the accused but that this power is subject to two qualifications viz., one contained in Sub-section (2) of that section and the other under Section 366(2) when he has to pronounce judgment of conviction and sentence not imposing a sentence of fine only.

23. On consideration of the aforesaid views of Bombay, Madras and Calcutta High Courts discussed above it seems to me that it cannot be laid down as an inflexible rule that in no case can the exemption extend when the Magistrate has to examine the accused under Section 342, Criminal P. C. It is a matter of his discretion. Cases may be of such sort that enforcing his personal attendance may work injustice to the accused or hardship. In that case if his counsel's statement is recorded in place of that of himself it would not be illegal.

24. The opposite view that in every case his presence ought to be there when the accused is to be examined under Section 342, Criminal Procedure Code does not appear to be correct.

25. This view proceeds upon the wordings of Section 342, Criminal Procedure Code alone and does not take into account the provisions pertaining to exemption and also provisions of Section 366 (2).

26. In the present case this question is not so -much involved because the High Court at the time of granting exemption exercised its discretion and granted exemption to the accused throughout the trial.

27. In view of the specific wording of the order the two Courts below had no option but to hold that the presence of the accused cannot be insisted unless some special circumstances supervene which entitled the Magistrate to pass a fresh

order in view of them.

28. The petition therefore cannot be accepted.It is hereby rejected.

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