

In Re: Shantilal and ors.

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Court : Madhya Pradesh

Decided On : Jan-14-1959

Reported in : AIR1959MP290; 1959CriLJ988

Judge : S.D. Shrivastava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173 and 173(4)

Appeal No. : Criminal Revn. No. 238 of 1958

Appellant : In Re: Shantilal and ors.

Advocate for Pet/Ap. : S.L. Dube, Adv.

Disposition : Reference accepted

Judgement :

ORDER

S.D. Shrivastava, J.

1. This is a reference by the learned Sessions Judge, West Nimar, Mandleshwar, recommending that the order passed by the Magistrate, First Class, Kasrawad, in Criminal Case No. 136 of 1957 on April 4, 1958, be set aside and the prosecution be allowed to furnish fresh documents in the course of that trial.

2. The material facts are that Shantilal and seven others are being tried by the Magistrate, First Class, Kasrawad, who has framed a charge against each of them under Section 147 read with Section 34 I.P.C. With the police report dated October 28, 1957, certain copies were filed under Section 173 Criminal Procedure Code. These copies were supplied to the accused. On December 6, 1957, charges were framed against the accused. On March 20, 1958 the prosecution made an application to the trial Magistrate seeking leave to file two more documents, viz., (i) application dated April 9, 1957, addressed by Chunnilal (complainant) to the District Superintendent of Police, in connection with this very matter, which was forwarded to the Station House Officer after the prosecution had been initiated, and (ii) copy of judgment dated March 12, 1958, passed by the additional Sessions Judge, Mandleshwar in Criminal appeal No. 108 of 1957.

3. The said application dated March 20, 1958, was opposed by the defence. The learned trial magistrate held that once copies are filed under Section 173 Criminal Procedure Code, supplementary Or additional documents could not be permitted to be filed as there was no such provision in the Code. According to him, the only stage of filing the documents is before the commencement of the trial.

4. On revision, the learned Sessions Judge has taken a contrary view and has referred this case here as stated above.

5. Shri S. L. Dube, learned Deputy Government Advocate supporting the reference, has relied on the decisions in Chaturbhuj v. Naharkhan, 1958 MPC 190: (AIR 1958 Madh Pra 28) K. Semaswn-daram v. Gopal, AIR 1958 Mad 341; and Ali Jan v. Amir Khan, (S) AIR 1957 Cal 332. In these cases it has been held that the court has power to allow fresh witnesses to be examined although they may not have been named in thg original list. I am aware of the conflict of judicial opinion on the interpretation of the expression 'remaining witnesses' used in Section 256 of the Code. But that is not the point for consideration before me. From the wording of Section 173 (4), it is very clear that the law imperatively requires copies of all documents on which the prosecution relies to be furnished to the defence before the commencement of the trial. It is also true that the provision is mandatory in nature. But in this provision, we cannot read any disabling provision

so that the court becomes powerless to allow the prosecution to file fresh documents. In the present case, the first document above-named came to the investigation officer after he had submitted the challan to the court and the second document is patently one which could not be filed with the challan because that judgment was pronounced subsequent to the institution of the police report in court. That apart, the magistrate in the discharge of his judicial functions must always be left free to exercise his discretion in the matter of production of evidence by the parties, within the limits prescribed by the law, and if there is no express provision debarring evidence to be produced at a certain stage, the procedure should be construed in such a manner as not to deprive the court of that discretion. In Section 173, nor in any other provision of the Code of Criminal Procedure, do I find any such disabling provision; I do not find in the Code any provision which prevents the prosecution from filing additional documents or statements of witnesses on whom they propose to rely. What value is to be attached to such additional documents which are produced at a late stage, will always depend upon the peculiar circumstances of each case. I therefore hold that the trial magistrate has power to admit in evidence both the documents which the prosecution seeks to produce. Of course, copies thereof must be supplied to the defence. I am supported in my view by a recent decision of the Madras High Court in *Public Prosecutor v. Pachiappa*, AIR 1958 Mad 295.

6. I, therefore, accept this reference and setting aside the order dated April 4, 1958 passed by the Magistrate, First Class, Kasrawad, grant leave to the prosecution to file both the documents referred to in their application dated March 20, 1958. The prosecution must supply in advance copies thereof to the defence.