

G.V. Kale Vs. State

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Court : Madhya Pradesh

Decided On : Feb-08-1957

Reported in : AIR1957MP240; 1957CriLJ1417

Judge : Dixit, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256

Appeal No. : Criminal Revn. Nos. 27 to 29 of 1957

Appellant : G.V. Kale

Respondent : State

Advocate for Def. : P.R. Sharma, Govt. Adv.

Advocate for Pet/Ap. : D.P. Vaidya, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Dixit, J.

1. The State has instituted three separate prosecutions against the petitioner in the Court of Additional City Magistrate of Indore in respect of the offences under Section 409, I. P. C. read with Section 109 and Section 477A, I. P. C. On the

conclusion of the cross-examination of certain witnesses after the framing of the charge, the prosecution made an application for being allowed to examine three new witnesses on their behalf, namely, Ganesh Shankar, Kailash Kashinath Giri and Sarangpani Engineer.

The accused contended that the prosecution could not tender these new witnesses in evidence as they had not been named in the Challan and could not be regarded as 'remaining witnesses' under Section 256, Cr. P. C. This contention was rejected by the trial Magistrate who held on the authority of certain decisions of Madras, Orissa, Bombay and Rajasthan High Courts that the words 'remaining witnesses' in Section 256, Cr. P. C., did not necessarily refer to those witnesses named by the complainant as required by Section 252 (2) and summoned by the Magistrate before the framing of the charge and that those words included any witness who according to the prosecution was able to support its case, though he had not been summoned or named by the prosecution before the framing of the charge.

On this view, the trial Magistrate permitted the prosecution to produce in evidence the three above named witnesses. The accused then preferred a revision petition before the learned Sessions Judge of Indore, who upheld the decision of the trial Magistrate. The accused has now filed three separate revision petitions against the orders pronounced by the learned Sessions Judge in three separate cases. The point raised in all these revision petitions is common,

2. In my opinion, all these petitions must be accepted. The point raised is covered directly by a decision of this Court in *Abdul Razake v. Haji Hussain*, AIR 1945 Nag 286 (A). In that case contrary to the view taken by the Bombay, Orissa, Madras and Rajasthan High Courts it has been held that the prosecution cannot examine a fresh witness under Section 256 when that witness had not been named in the Challan or summoned before the framing of the charge. To the same effect are the decisions of this Court in *Hansraj Harjiwan v. Emperor*, AIR 1940 Nag 390 (B) and *Hajari Tika v. Emperor*. AIR 1934 Nag 156 (C).

The learned Government Advocate did not dispute that in view of the decision of this Court in *Abdul Razake v. Haji Hussain*, (A) the order of the trial Magistrate

cannot be upheld. It is somewhat surprising to find that though both the lower Courts referred to various decisions of other High Courts on the point, they totally ignored a decision of this Court which directly was in point. If only they had taken the trouble to look up any standard book on Criminal Procedure Code they would have found that the view taken by this Court is quite different from that taken by the Bombay, Madras, Rajasthan and Orissa High Courts.

3. In the result the order of the trial Magistrate dated 13-7-1956 is set aside and it is held that the prosecution cannot now claim at this stage to examine the three new witnesses they wish to.

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