

Hamerkunwarbai Vs. State

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Court : Madhya Pradesh

Decided On : Jan-09-1957

Reported in : 1957CriLJ672

Judge : Nevaskar, J.

Appellant : Hamerkunwarbai

Respondent : State

Judgement :

ORDER

Nevaskar, J.

1. Accused Hamerkunwarbai was prosecuted along with accused Bahadursingh for an offence under Section 33 of the Madak Dravya Vidhan. Tile case was being tried as a summons case. An application was submitted on behalf of Hamerkunwarbai for being allowed to appear by her pleader.

2. This application was not entertained by the learned Magistrate on the ground that the plea of the accused was to be recorded. He held that the application for her being allowed to appear by a pleader would be considered after recording her plea.

3. A petition for revision of this order was filed in the Court of the Additional Sessions Judge Mandsaur who relying upon the decision *Champa Devi v. Babulal Goenka* : AIR1950 Cal161 , held that it was competent for the learned Magistrate to record the plea of the accused by putting questions to her counsel and that it was not necessary for that purpose to enforce her attendance. He has therefore made this reference recommending that her presence at this stage should not be enforced particularly for the purpose of recording her plea.

4. There is no doubt that the case was being tried as a summons-case and the first step which the Magistrate has to take after the accused appears or is brought before the Court, is the one provided under Section 242.

5. Section 205 of the Criminal Procedure Cod empowers a Magistrate issuing a summons to a accused person to dispense with his attendance for proper reasons and to permit him to appear by his pleader.

6. The procedure provided under Section 242, Cr. P. C. requiring the Magistrate to put to the accused who appears or is brought before him the particulars of the offence of which he is accused asking him to show cause why he should not be convicted, is intended to take the place of framing a formal charge. It is only if the accused admits to have committed the offence and shows no sufficient cause why he should not be convicted that the Magistrate is entitled to convict him as provided under Section 243, Cr. P. C.

If the accused does not wish to admit the commission of the offence and wants to plead not guilty then he is to be tried in accordance with the procedure prescribed under Section 244 of the Criminal Procedure Code. Therefore at this stage all that the accused is to do is either to plead guilty or not guilty. There is no reason why this cannot be done by the accused through her pleader.

When the Magistrate permits the accused to appear through her pleader under Section 205, Cr. P. C., it must be taken that such appearance by her pleader involves performance of all acts that devolve upon the accused in the course of the trial for the purpose of protecting the interest of the accused. Therefore it is open for a pleader to make the necessary answers and either plead guilty or claim

to be tried, under Sections 242 and 243, C. P. C. This view is taken in *Dorabshah Bomanji v. Emperor* ILR 50 Bom 250 : AIR 1926 Bom 218(B); *Champa Devi v. Babulal Goenka* (A) and *In re Sukhalata Gupta* 21 Cal WN clxviii (C). The Magistrate probably thought that this could not be done and he therefore deferred the consideration of the application till the plea of the applicant is recorded.

7. As discussed above it is not necessary to do so and the pleader appearing for her could make a statement on her behalf after receiving necessary instructions,

8. The Magistrate is therefore directed to consider her application on merits and if he sees no serious reason to refuse her the exemption from personal appearance prayed for by her allow her application.

9. The reference is accordingly accepted.

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