

Mohanlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-22-2000

Reported in : 2000(3)MPHT435

Judge : Shambhoo Singh, J.

Acts : Indian Penal Code (IPC) - Sections 420 and 468; Code of Criminal Procedure (CrPC) , 1974 - Sections 311, 391 and 482; [Constitution of India](#) - Article 21

Appeal No. : Misc. Criminal Case No. 1792/2000

Appellant : Mohanlal

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. General

Advocate for Pet/Ap. : V.K. Gangwal, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Shambhoo Singh, J.

1. The petitioner/accused was convicted by J.M.F.C. Indore on 29-4-99 in Criminal Case No. 2756/98 for offence under Sections 468 and 420, IPC, and sentenced to three years R.I. and to pay fine also. The petitioner filed Criminal Appeal No. 114/99, against the judgment and Order passed by the J.M.F.C. The petitioner made an application under Sections 311 and 391, Cr.P.C. praying that due to his poor financial condition he could not engage a lawyer in trial Court, therefore, three prosecution witnesses Gopal Solanki (P.W. 2), Shrikrishan (P.W. 5) and Mahendra Bai (P.W. 9), who were important witnesses, and could not be cross-examined by the petitioner be ordered to be summoned for cross-examination. The learned Appellate Judge dismissed this application observing that if the appellant was suffering from poverty and was not in a position to engage a lawyer, he could pray to the trial Judge to provide him an Advocate at the State cost and as he did not make an application in this regard, now his prayer for resummoning witnesses cannot be allowed at the Appellate stage and permission for cross-examination of the above witnesses cannot be given and rejected the application. Hence this petition under Section 482 Cr.P.C.

2. From the perusal of the impugned Order it is clear that the learned A.S.J. committed grave error and illegality in dismissing the application. It is unfortunate that the learned Appellate Judge instead of correcting the illegality committed by the Trial Judge is not informing the petitioner of his legal right of being provided legal aid at State cost fell in error and committed further illegality in dismissing the application. It must be remembered that every accused has a fundamental right under Article 21 of [Constitution of India](#) to obtain lawyer at the State cost in Criminal Trial, if he is not in a position to engage a lawyer. Their Lordships of the Supreme Court in case of Hussainara Khatoon v. State of Bihar (AIR 1979 SC 1369), held :

'The right to free legal service is clearly an essential ingredient of reasonable fair and just procedure for a person accused of an offence and it must be held to be implied in the guarantee of 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of

the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.'

The Apex Court in case of M.K. Moskot v. State of Maharashtra (AIR 1978 SC 1548) expressed the same view and held :--

'It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.'

The learned Additional Sessions Judge fell in error in holding that the petitioner did not make prayer for providing lawyer at State cost before the Magistrate, therefore, he could not pray for resummoning the witnesses for cross-examination. In fact it was the duty of the Trial Judge to have intimated the petitioner of his fundamental right to obtain lawyer at State cost before starting the trial.

3. Their Lordships of the Supreme Court in case of Suk Das v. Union Territory of Arunachal Pradesh (AIR 1986 SC 991) considered the situation where the accused did not pray the Trial Judge to provide him an advocate at State cost and observed :

'That it is the duty of the Trial Judge to intimate the accused of his fundamental rights to have free legal assistance at the State costs.'

Their Lordships further considered the question whether this fundamental right of free legal assistance at the State cost can be denied to the appellant if he did not apply for free legal aid and observed :--

'But the question is whether this fundamental right could lawfully be denied to the appellants if they did not apply for free legal aid. Is the exercise of this fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him ?... It would in these circumstances make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service. Legal aid would

become merely a paper promise and it would fail of its purpose. This is the reason why in *Khatri v. State of Bihar*, (1981) 2 SCR 408: (AIR 1981 SC 928), we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State... The Magistrates and Sessions Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that is entitled to free legal services at the cost of the State, unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country.... to make provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation.'

From the above it is clear that it is the fundamental right of the accused to get free legal aid at the State cost and the trial Courts are under an obligation to inform the accused of this valuable right.

4. From the impugned Order of the learned Sessions Judge it is clear that the trial Magistrate did not intimate the appellant that he was entitled to have free legal aid at the State cost and did not make him available an Advocate. This was in clear violation of fundamental right of the petitioner guaranteed under Article 21 of the [Constitution of India](#) and this has vitiated the trial.

5. Thus, not only the impugned Order passed by learned A.S.J. is illegal but the judgment of trial Magistrate convicting and sentencing the petitioner under Sections 468 and 420, IPC is also illegal. To secure ends of justice I set aside the Order passed by A.S.J. and the judgment passed by the J.M.F.C. and direct that the petitioner/accused shall be retried by the Magistrate. Shri Gangwal, learned counsel for the petitioner submits that he will represent the petitioner in trial Court. The trial Court shall give opportunity of cross-examining all witnesses examined by the prosecution or the witnesses whom the petitioner wants to cross-examine. The petitioner would be free to examine defence witnesses if he chooses to do so and thereafter Magistrate shall dispose of the case in accordance with the law after

following due procedure prescribed under the Code of Criminal Procedure. In view of above Criminal Appeal No. 114/99 has become infructuous it stands disposed of. As such the petitioner accused shall appear before the trial court on 28-6-2000.

Before parting with this order, I would like to make it clear that Magistrates and Sessions Judges shall always keep in mind that it is the fundamental right of the accused to get legal aid at the State costs and they are legally bound to inform accused persons of their valuable right of getting free legal aid at the State Cost and would make them available the service of competent advocate before starting trial if they were not in a position to engage lawyer. It is made further clear that this right is not dependent on making an application by the accused for providing him an Advocate at the State cost. In the result the petition is allowed.

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