

State Vs. Siba Singh

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Court : Orissa

Decided On : Sep-04-1967

Reported in : AIR1968Ori71; 1968CriLJ532

Judge : G.K. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207A

Appeal No. : Criminal Ref. No. 22 of 1967

Appellant : State

Respondent : Siba Singh

Advocate for Pet/Ap. : Standing Counsel

Judgement :

ORDER

G.K. Misra, J.

1. Before the committing Magistrate, the Court Sub-Inspector filed a memo declining to examine any one of the two witnesses to the actual commission of the crime. The committing Court perused the police papers, heard arguments and committed the case to the court of sessions without examining any of the eye-witnesses to the occurrence. The learned Sessions Judge relying upon (1958) 24 Cut. LT 146 : (AIR 1058 Orissa 241) State v. Anadi Betankar held that the

committing Magistrate had no option but to examine the eye-witnesses and without such examination, the commitment was without jurisdiction.

2. The law laid down in the aforesaid decision is not strictly accurate in view of the decision of the Supreme Court in AIR 1961 SC 674 *Shri Ram v. State of Maharashtra*; AIR 1965 S.C 712 *Kirpal Singh v. State of U. P.* Section 207-A, Sub-section (4) Cr.P.C lays down that the Magistrate shall then proceed to take evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interest of justice to take the evidences of any one or more of the other witnesses for the prosecution, he may take such evidence also.

On analysis, the position is clear that if any of the eye-witnesses to the actual commission of the offence are produced by the prosecution, the Magistrate is bound to take their evidence. Even if the prosecution does not produce the witnesses to the actual commission of the offence the Magistrate must decide for himself if it is to examine any or all of those witnesses in the interest of justice. If after recording reasons, he comes to the conclusion that no such witness need be examined, it is open to him to direct commitment on other materials referred to in Sub-section (6). This position was fully explained in (1966) 32 Cut. LT 599 *Chintamani v. State*. The learned Sessions Judge should have kept himself in touch with law and followed the correct view.

3. The learned Sessions Judge's judgment can, however, be supported on the ground that the learned Magistrate has given no reasons as to why he did not examine any one of the witnesses to the actual commission of the offence. On that ground alone, the commitment order must be set aside. The case would go back to the committing Magistrate. He is directed to examine the two eye-witnesses before he records his final order of commitment or discharge.

4. For reasons different from those which appealed to the learned Sessions Judge, the reference is accepted.

