

Hari Charan Vs. the State

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Court : Punjab and Haryana

Decided On : Nov-29-1951

Reported in : AIR1955P& H17; 1955CriLJ315

Judge : Soni, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 94

Appeal No. : Criminal Revn. Petn. No. 903 of 1951

Appellant : Hari Charan

Respondent : The State

Advocate for Def. : Bhagirath Das, Adv. for Adv. General

Advocate for Pet/Ap. : Party in person

Disposition : Petition allowed

Judgement :

Soni, J.

FACTS

1. This is a revision petition against the order of Shri G.L. Mittal, Magistrate 1st Class, dated 11-6-1951, made on an application under Section 94, Criminal P. C.,

filed by the petitioner as an accused in a case under Section 408, 420, I. P. C., for the production of certain documents. On this application, the learned Magistrate passed the following order:

'Heard, the learned counsel for the applicant and the P. S. I. There is no necessity for the prosecution to wait for the documents prayed for in the application. The prosecution shall proceed. These documents, if at all be needed in defence, they may be summoned. Prosecution need not wait.'

2. The proceedings are forwarded for revision on the following grounds:

The learned counsel for the petitioner contends that under Section 94, Criminal P. C., the Court should summon the documents asked for by the accused before the charge has been framed in a case and an application for production of documents under Section 94 cannot be rejected, merely because the accused can make such an application under Section 257, Criminal P. C., after he has entered upon his defence. In support of his contention, he relies on the Full Bench authority reported in -- 'Mohammad Rahim v. Emperor', AIR 1935 Sind 13 (A). It was held in that case that there was nothing under Section 94, Criminal P. C., which restricted the use of the machinery provided therein to any particular stage of an investigation, enquiry, trial or other proceeding under the Code and Sections 94 and 257 are not antagonistic but interdependent.

Under Section 94, an accused may at any stage apply to the Court to call for the production of a document and is entitled to its production if he satisfies the Court that such production is necessary or desirable for the purpose of such enquiry, trial or other proceeding. In the present case, the learned Magistrate has not held that the production of the documents called for was not necessary or desirable for the purpose of the enquiry or trial. As urged by the learned counsel for the petitioner it is necessary that these documents should be produced in Court in order to facilitate the cross-examination of the prosecution witnesses at this stage before the Court considers the question of framing a charge against the accused.

3. The petitioner had applied for the production of Patiala Hotel Register alleged to contain entries relating to the stay of the petitioner in the said Hotel from 15-2-

1943 to 17-2-1948. These entries will be relevant for determination of the authenticity of the document (Ex.: P. W. 4/A) which is dated 15-2-1948. Similarly, the other documents mentioned in para. 10 of the application are relevant for the defence of the petitioner. Some of these documents are in the possession of the Registrar, Joint Stock Companies, Delhi, and others, in possession of the Manager, Lakshmi Insurance Company, Delhi, and Manager, Saraswati Insurance Company, Delhi. It cannot, therefore, be held that the application for calling these documents had been made for the purpose of vexation or delay or for defeating the ends of justice.

4. The learned Public Prosecutor, on the other hand, has cited -- 'Bijai Raj v. State', AIR 1950 Ajmer 25(2) (B) and -- 'Vishambhar Dayal v. Emperor', AIR 1941 Oudh 33 (C). It was held in the first case that it was not for a Court of revision to interfere with the discretion exercised by the trial Court in the matter of deciding which of the witnesses desired to be summoned by the prosecution were necessary witnesses. In the second case, it was held that the Court was not bound to summon all the witnesses cited by an accused person under Section 257, Criminal P. C., and it has power to refuse to summon all the witnesses, on the ground, that the application was made for the purpose of vexation or delay or for defeating the ends of justice. These authorities, however, are distinguishable from the facts of the present case. In view of the authority cited on behalf of the petitioner I am of the opinion that under Section 94, Criminal P. C., the trial Court should have called these documents or else should have recorded the reasons for not calling these documents at that stage. The learned Magistrate could not refuse to call these documents, merely on the ground that these could be summoned in defence, if at all needed. Accordingly, I submit the record of the case to the Hon'ble High Court with the recommendation that the order of the learned Magistrate, dated 11-8-1951 may be set aside and he may be directed to summon these documents.

ORDER

5. For reasons given by the Additional Sessions Judge, the recommendation is accepted. The Magistrate will summon the documents.

