

**Ranjit Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Aug-01-1978

**Reported in :** 14(1978)DLT188

**Judge :** R.N. Aggarwal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 329 of 1978

**Appellant :** Ranjit Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Ashok Sapra and; S.K. Agarwal, Advs

**Judgement :**

**R.N. Aggarwal, J.**

(1) On 21st September 1975 Vasheshar Nath filed a complaint at the Police Station, original Road, alleging that before going to west Bengal he left his motor-cycle bearing registration No. Hrg, 3248 with his friend Aytar Kishan, resident of Joshi Road, Karol Bagh, New Delhi, that the accused Ranjit Kumar who is a relative of his and was residing in Ballabgharh, District Gurgaon went to Avtar Kishan and obtained possession of the motor cycle by misrepresenting that the motor-cycle was required by him (complainant) at Faridabad, that on 10th

September 1975, he came to know about the above fact and on that he went to the accused and asked for the motor-cycle but he refused to give the motor cycle.

(2) On the above report the police registered a case under Sections 400 and 420 of the Indian penal Code against Ranjit Kumar.

(3) On 18th March, 1978 Ranjit Kumar made an application to the Court alleging therein that the motor cycle in question was attached by the Assistant Collector of Revenue, Ballabgarh in June, 1974 in execution of a warrant of attachment against Vasheshar Nath and the motor cycle was given to his (accused's) father on superdari and that the motor cycle was seized by the police from the house of his father on a false report made by Avtar Kishan. The accused prayed that the file from the office of the District Revenue Authority be summoned to arrive at the truth.

(4) On the above application the Chief Metropolitan Magistrate (predecessor of Shri P.K. Jain) passed an order for summoning the record from the office of the District Revenue Authority. It is stated at the bar that while hearing the arguments at the charge stage the Chief Metropolitan Magistrate thought it necessary for the just decision of the case to examine Naranjan Dev, Head Clerk of Tehsil Ballabgarh, Vasheshar Nath, complainant and Avtar Kishan Sharma and examine the file pertaining to the inquiry against Dewan Chand, Clerk, Tehsil Ballabgarh and accordingly summoned the above said witnesses and the file. The Court examined Naranjan Dev, Avtar Kishan Sharma and Dewan Chand.

(5) On 24th October, 1977 the complainant filed an application stating there in that before framing of the charge the Court could not examine the witnesses and their statements cannot be taken into consideration for the purpose of framing the charge. Shri P.K. Jain, Chief Metropolitan Magistrate, who succeeded Shri Mohd. Shamjm, Chief Metropolitan Magistrate, accepted the contention of the complainant and held that the evidence of C.W.1 to C.W.4 shall be ignored for the purposes of framing to the charge. He also held that the complainant cannot be examined as a Court witness at that stage. The relevant portion of the Chief Metropolitan Magistrate's order reads as follows:

'FOR the reasons mentioned above, I hold that the evidence of the 4 witnesses recorded by my learned predecessor is in violation of the express provisions of the Code of Criminal Procedure and cannot be taken into consideration at all for deciding the question whether a charge should or should not be framed against the accused, nor the complainant can and should be examined at this stage. It may be clarified that the file summoned from the Revenue and Industrial Departments, Ballabgarh are the documents summoned under the powers conferred upon the Court by Sec. 91 of the Code of Criminal Procedure and the said record can definitely be taken into consideration for deciding the question of charge at this stage. therefore, I accept this application and hold that the complainant cannot be examined as a court witness at this stage. The evidence of Cw 1 to Cw 4 will be ignored in deciding the question of charge. However, the summoned documents will be taken into consideration for deciding the said question'.

(6) Section 311 of the Code of Criminal Procedure, which finds place in Chapter Xxiv under the heading 'General Provisions as to Inquiries and Trials', reads as under :

'311. Any Court may, at any stage of any inquiry, trial or other proceeding under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case'.

(7) From a reading of the above provision it is clear that the powers conferred by Section 311 can be exercised at any stage of the inquiry or trial. The discretion given to the Magistrate under this section is not limited to any particular stage of the inquiry or trial. The only pre-requisite to the exercise of the power being that evidence should be essential to the just decision of the case.

(8) The above view finds support from the decision of the supreme Court in *Jamatrai Kewli Govani v. State of Maharashtra*. : 1968 CriLJ231 , wherein their Lordships held as under :

'CHAPTER 21 of Cr. P.C. does not restrict the powers of Criminal Court under S. 540. Section 540, Criminal P.C. and Section 165 Evidence Act, confer a wide discretion on the court to act as the exigencies of justice require. Section 540 is intended to be wide as the repeated use of the word 'any' throughout its length clearly indicates. The section is in two parts. The first part gives a discretionary power but the latter part is mandatory. The use of the word 'may' in the first part and of the word 'shall' in the second firmly establishes this difference. As the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bona fide of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. There are, however, two aspects of the matter which must be distinctly kept apart. The first is that the prosecution cannot be allowed to rebut the defense evidence unless the prisoner bring forward something suddenly and expectedly. There is however, the other aspect namely of the power of the Court which is to be exercised to reach a just decision. This power is exercisable at any time'.

(9) For the reasons stated above I allow the petition and quash the order of the Chief Metropolitan Magistrate dated 2nd May, 1978. The learned Chief Metropolitan Magistrate shall consider the evidence and other documents on record before taking a decision whether the charge is to be framed or not. The parties shall appear before the Chief Metropolitan Magistrate on 21st August, 1978, the date already fixed in the case.

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