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Sukhlal Etc. Vs. State

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Court : Delhi

Decided On : Oct-24-1972

Reported in : 1973RLR67

Judge : M.R.A. Ansari, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 251A

Appeal No. : Criminal Revision Appeal No. 279 of 1973

Appellant : Sukhlal Etc.

Respondent : State

Advocate for Pet/Ap. : R.K. Naseem and; Charanjit Talwar, Advs

Judgement :

M.R.A. Ansari

(1) The petitioner is an accused in a case under sections 147 and 325 Indian Penal Code pending in the Court of the Judicial Magistrate 1st Class, Delhi. After the close of the prosecution evidence, the petitioner was examined under section 342 Cr. P.C. and when asked whether he wished to examine any defense witnesses, he filed a list of 11 witnesses and wanted them to be summoned. The learned Magistrate passed the fallowing orders :--

'THEwitnesses be summoned on payment of process fee and diet money. Rs. 175.00 as diet money be deposited.'

the petitioner did not deposit the process fee and the diet money as directed by the learned Magistrate, but filed a revision petition in the Court of Session contending that no reasons were assigned by the learned Magistrate for requiring him to deposit the diet money of the witnesses and that the learned Magistrate ought to have summoned the defense witnesses at Government expense. The learned Additional Session Judge accepted this contention and has submitted a report to this Court with a recommendation that the order of the learned Magistrate directing the petitioner to deposit the process fee and diet money before summoning the defense witnesses be quashed and that the learned Magistrate be directed to summon the defense witnesses at Government expense.

(2) The petitioner is being tried under the procedure prescribed by section 251-A Cr. P.C. as the case against the petitioner has been instituted on a police report and the case is triabe under the warrant-

'If the accused, after he has entered upon his defense, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that suchpplication should be refused on the ground that it is made for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by him in writing.'

The proviso to sub-section (9) is not relevant. Sub section (10) reads as follows :-

'THEMagistrate may, before summoning any witness on such appli- cation under sub-section (9) require that his reasonable expenses incurred in attending for the purpose of the trial be deposited in Court.'

Under sub-section (9), thereforee, the Court is bound to issue summons to the defense witnesses, unless he considers that the application for summoning the defense witnesses is made for the purpose of vexation or delay or for defeating

the ends of justice. In the present case, the learned Magistrate has not refused the application of the petitioner to summon defense witnesses. He has only rected the petitioner to deposit the process fee and the diet money before summoning the witnesses. Sub-section (10) gives a discretion to the Magistrate to require the petitioner to deposit the reasonable expenses which would be incurred by the witnesses in attending the Court before issueing summon to them. It is now well-settled that wherever a discretion is given to the Court, such a discretion should be exercised judiciously and not arbitrarily. If follows that the Court has to give reasons for the exercise of his discretion either in favor of or against the accused.

(3) The provisions of sub-sections (9) and (10) of section 251-A Cr. P.C. have to be read with section 544/Cr. P.C. which reads as follows :-

'EXPENSESof complainants and witnesses.'

SUBJECTto any rules made by the State Government any Criminal Court, may if it thinks fit. order payment, on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceedings before such Court under this Code.'

REFERENCEin this section to witness is not confined to witness of the complainant but includes a witness of the defense also. The words 'if it thinks fit' appearing in section 544 Cr. P.C. indicate that the Court has to state the reasons for ordering payment by the Government of the reasonable expenses of the witnesses.

(4) Rule 1 of Chapter 9-A, Vol. Ill, of the Rules and Orders of the High Court framed under section 544 Cr. P.C. and which are applicable to the Courts in Delhi reads as follows :-

'THECriminal Courts are authorised to pay, at the rates, specified below ; the expenses of complainants or witnesses in cases in which the prosecution instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of

the public service (2) in all cases entered in column 5 of Schedule Ii appended to the Code of Criminal. Procedure, as not bailable, (3) in all cases which are cognizable by the police and (4) of witnesses in all cases in which they are compelled by the Magistrate, of his own motion, to attend under section 540 of the Code of Criminal Procedure.'

A Division Beach of the Lahore High Court has put the following interpretation on the above rule in E.G. Mekana v. E.C. Godfert AIR 1945 Lah 63 :-

'INother words, even in the four classes of cases mentioned above the Court merely has a discretion to pay the expenses of the witnesses, and will ordinarily do so, but not bound to do so in every instance.'

The following interpretation has been put on section 257(2) of the Criminal Procedure Code, which is analogous to sub-section (5)' of section 251-A Cr. P. C. by a single Bench of the Punjab High Court in Jit Singh Rattan Singh T. State

'THEposition that emerges on perusal of this rule is that in the summoning of' witnesses in cases instituted or carried on by or under the orders or with the sanction of the Government or of any Judge, Magistrate, or any other public servant, or in those which are cognizable by the police, no distinction is made between witnesses summoned by the prosecution or the accused 'in the payment of their expenses. While making such an order for summoning a witness and calling upon an accused person to deposit his expenses, the Magistrate must record his reason for departing from the usual practice.'

(5) The learned counsel for the State drew my attention to a Single Beach decision of the Allahabad High Court in Badri Prasad v. State reported in 1967 A.L.J. 604 in which it was held that;

'IFan accused seeks to call a witness in his defense he cannot insist on Summons being issued without first depositing the expenses of the witness for attending the Court.'

THATwas a case, to which the provisions of section 257(2) are applicable. Under section 544 Cr. P.C., the U.P. Government had framed rules and rule 39 thereof

provided that the payment of reasonable expenses to complainants and witnesses, attending criminal courts for the purpose of any inquiry, trial, or other proceedings shall be regulated by the rules framed by the Government under section 544 of the Code contained in Notification No. 173/V1-2234-40 dated July 11, 1941. Appendix 'H' mentioned the circumstances in which a criminal court might order payment of expenses on the part of the Government for attendance of a complainant or witness. By the notification aforesaid Magistrates were not empowered to summon defense witnesses without calling upon the accused to deposit the expenses of their attending the court. It was, thereforee, held that there was no provision which might exempt an accused person from depositing costs of summoning a defense witness. The rules framed by the U.P. Government under section 544 Cr. P.C, are obviously different from the rules framed by the Punjab Government. thereforee, the rule laid down by the Allahabad High Court will not apply to the instant case.

(6) The position, thereforee, appears to be that in exercising its discretion under subsection (10) of section 251-A Cr. P.C., the Court has to give reasons for requiring the accused to deposit the reasonable expenses of the witnesses. The normal rule in cases governed by section 251-A Cr. P.C. would be to summon the defense witnesses also at the State expense and if a departure is made from normal rule, the Court has to give reasons. In the present case, the learned Magistrate has not given any reasons for requiring the petitioner to deposit the expenses of the witnesses. His order is, thereforee, set aside and he is directed to pass a fresh ordar in the light of the observations made by me.

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