

K.A. George Vs. the State and ors.

K.A. George Vs. the State and ors.

SooperKanoon Citation : sooperkanoon.com/725252

Court : Kerala

Decided On : Jan-12-1973

Reported in : 1974CriLJ550

Judge : K. Bhaskaran, J.

Appellant : K.A. George

Respondent : The State and ors.

Judgement :

ORDER

K. Bhaskaran, J.

1. This revision is against an order passed by the learned District Magistrate, Ernakulam, dismissing a petition for issue of summons, filed by the revision petitioner.

2. The complainant-revision petitioner filed the complaint alleging that the first accused had committed an act of forgery in connivance with the second accused. The 3rd accused is stated to be a former Secretary. The complainant was, during the material time, the Treasurer of Wepco Employees' Multipurpose Co-operative Society Ltd., of which the first accused was the Secretary. It is stated that there was a cash shortage of Rs. 675/- odd at the time when the first accused handed over charge to the second accused. It is further stated that this shortage was

noted in the depot nalvazhi of the society. Subsequently, I am told, the society passed a resolution to write off the amount, which was acknowledged by the first accused at the time of handing over charge, as disclosed by the entry made by the first accused himself in the depot nalvazhi. However, the Registrar of Co-operative Societies did not agree to the proposal for writing off. This resulted in the society proceeding against the revision petitioner, in his capacity as the Treasurer, for recovery of this amount with interest at 18%. During the course of the proceedings before the Arbitrator, on 21-3-1970 it was found out by the revision petitioner that the acknowledgment in the hand of the first accused in the nalvazhi had been erased. It is also stated that as a matter of fact, during the cross-examination in the proceedings before the Arbitrator, the first accused had admitted that the entry was made in his own hand. Though a petition was filed by the revision petitioner for keeping that document in safe custody on the very same day (21-3-1970), it seems that no step was taken by the Arbitrator for the safe custody of the document. It is not necessary to narrate all that has happened subsequently. In the present petition, after narrating the events, the prayer is that, summons may be issued to the Arbitrator (Sri V.K. Peter) and the Deputy Registrar of Co-operative Societies, Ernakulam, who, it seems, has sent a letter stating that the depot nalvazhi referred to above was not with the Arbitrator (Sri V. K. Peter), who was supposed to be in custody of the document,

3. The learned District Magistrate dismissed the petition declining to exercise the power under Section 540 of the Code of Criminal Procedure, It is stated that only four names had been mentioned in the witness list that 'ac-companied the complaint, and that at the stage when the petition was filed it was not considered necessary to issue summons to the additional witnesses sought to be examined. I do not think that this approach of the learned District Magistrate is correct. Section 540, Crl. P. C. is as follows:

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 essential to the just decision of the case.

Here is a case where the complainant states that in order to prove his case it is necessary to examine these two witnesses. It would appear that the complainant was under the impression that the document could be procured by the issue of search warrant by the court. It was only when that course was found impracticable for certain reasons, which he could not anticipate, that the issue of summons was found necessary. If for unfolding the prosecution case it is necessary to prove and mark the document in which the alleged forgery appears, and for that purpose examination of these two witnesses is necessary, the learned District Magistrate ought to have exercised the power vested in him under Section 540, CrI, P. C. If these material witnesses are not examined at this stage and in consequence thereof the accused are discharged for want of necessary evidence, there is no scope for invoking Section 540, CrI. P. C. thereafter. Therefore, the District Magistrate ought not to have found fault with the petitioner, and held that the proper stage for the exercise of the court's power under Section 540, CrI. P. C. had not reached when the petitioner filed the petition for issue of summons to the additional witnesses. The interest of justice requires that in a case like this, the District Magistrate, taking a practical view of the things, should issue summons as prayed for, without being too technical about the matter.

I, therefore, set aside the order of the learned District Magistrate and direct him to issue summons to the witnesses as. prayed for in the petition, with necessary directions to produce the documents in their custody, on which the revision petitioner seeks to rely.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com